TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 36

ZELLERBACH PAPER COMPANY, PETITIONER,

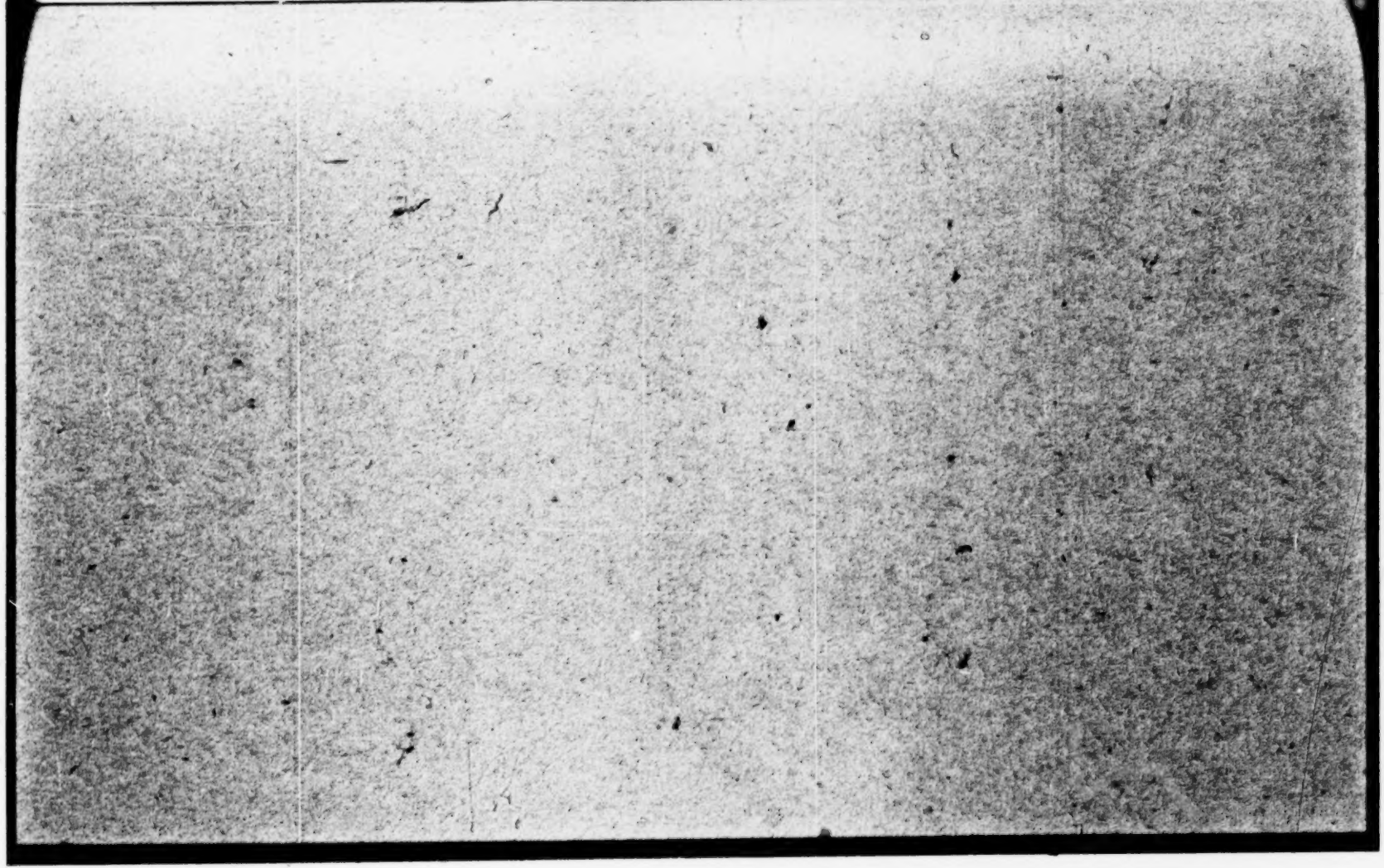
vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 10, 1934

CERTIORARI GRANTED JUNE 4, 1934



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APPEARANCES.

For Taxpayer:

JOHN F. NEYLAN, Esq.,
J. P. MILLER, Esq.,
W. C. MAGATHAN, Esq.,

For Comm'r:

H. A. COX, Esq.,
F. R. SHEARER, Esq., and
T. CALLAHAN, Esq.

Docket No. 41759

ZELLERBACH PAPER COMPANY,
a Corporation,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES.

Transferred to Mr. Murdock 3/28/32.

1928

Dec. 6—Petition received and filed. Taxpayer notified. (Fee paid)

" 7—Copy of petition served on General Counsel.

" 29—Motion to consolidate for hearing with dockets 35599 and 41758, filed by taxpayer.

1929

Jan. 21—Answer filed by General Counsel.

" 23—Copy of answer served on taxpayer. Circuit Calendar.

" 28—Motion of December 29 to consolidate, granted.

1931

Mar. 11—Motion to segregate from docket 35599 but to remain consolidated with docket 41758 filed by taxpayer. 3/13/31 granted.

Apr. 24—Hearing set June 10, 1931, at Oakland, California.

Jun. 10—Hearing had before E. H. Van Fossan, Div. 9 on merits. Amended petition filed—amended answer dictated into record. Copy served. Briefs due in 60 days.

Jul. 10—Motion for extension of 30 days to file answer to amended petition filed by General Counsel.

" 13—Transcript of hearing of June 10, 1931 filed.

" 13—Motion for extension of time to answer granted.

" 25—Answer to amended petition filed by General Counsel.

Aug. 3—Motion for 30 days to file brief, filed by taxpayer.

" 7—Motion for 60 days to file brief filed by General Counsel. 8/11/31 granted.

" 10—Order allowing petitioner until Sep. 8, 1931 to file brief entered.

1931

Sep. 7—Motion for extension to Oct. 7, 1931 to file brief filed by taxpayer. 9/10/31 granted.

Oct. 3—Brief filed by General Counsel.

" 8—Brief filed by taxpayer.

1932

May 17—Findings of fact and opinion rendered, John E. Murdock, Div. 3. Judgment will be entered for respondent.

" 19—Decision entered, Div. 3.

" 21—Notice of appearance of J. Paul Miller as counsel for taxpayer filed.

" 25—Order that decision entered 5/19/32 be amended as per this order entered. [1*]

Nov. 1—Supersedeas bond in the amount of $41,500.00 approved and ordered filed.

" 1—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

" 1—Proof of service filed by taxpayer.

" 23—Praecipe filed.

" 23—Proof of service filed.

" 28—Statement of evidence lodged.

" 28—Notice of lodgment of statement and of hearing Dec. 8, 1932 to approve statement filed.

" 29—Notice of change of hearing date from Dec. 8 to Dec. 7, 1932.

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

1932

Dec. 6—Objections to statement of evidence filed by General Counsel.

" 7—Hearing had before Mr. Murdock, Div. 3, on approval of statement of evidence. On respondent's motion, continued to Dec. 28, 1932.

" 7—Order continuing to Dec. 28, 1932, entered.

" 19—Copy of order from 9th Circuit enlarging time to Jan. 30, 1933 to file transcript filed.

" 20—Proof of service of objections filed by General Counsel.

" 28—Hearing had before Mr. Sternhagen, Div. 10, on approval of statement of evidence. On petitioner's motion continued to Jan. 11, 1933.

" 28—Order continuing to Jan. 11, 1933, for hearing on approval of statement of evidence entered.

1933

Jan. 7—Order from Circuit Court of Appeals (9) to transmit petitioner's Exhibits numbers 1 and 2 in original form, filed.

" 11—Hearing had before C. R. Arundell, Div. 7 on approval of statement of evidence—continued to Jan. 25, 1933.

" 11—Motion to postpone hearing filed by taxpayer—granted to 1/25/33.

" 23—Copy of order from 9th Circuit enlarging time to March 3, 1933 to file transcript filed.

1933

Jan. 25—Hearing had before Mr. Marquette on approval of statement of evidence. On motion of petitioner, continued to 2/15/33.

Feb. 15—Agreed statement of evidence approved and ordered filed.

" 15—Hearing had before Mr. Murdock on approval of statement of evidence. Agreed statement filed.

" 27—Copy of order from 9th Circuit for extension to April 3, 1933 to file transcript, of record filed.

Mar. 3—Copy of order from 9th Circuit for consolidation with docket 41758 filed. [2]

United States Board of Tax Appeals

Docket No. 41759

ZELLERBACH PAPER COMPANY,
a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:D:60D:CAM) dated October 10,

1928, and as a basis for its proceeding alleges as follows:

1. The Petitioner is a corporation organized under the laws of the State of California, and having its principal place of business at 534 Battery Street, San Francisco, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the Petitioner on October 10, 1928.

3. The taxes in controversy are income taxes for the fiscal year ended April 30, 1925, and for Seven Thousand, Six Hundred and One and 55/100 Dollars ($7,601.55).

The above total deficiency is based upon certain [3] adjustments made by the Commissioner of Internal Revenue. Included in these adjustments is the following addition to the net income of the taxpayer as shown in Schedule 16, page 19, of Treasury Department letter dated October 10, 1928, as follows:

"(d) Depletion claimed	$34,492.50
Corrected 3,679.20 cords at $4.12 in accordance with Engineers report for prior years	$15,158.30
Net disallowed	$19,334.20"

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining the deficiency set forth in his Sixty Day Letter dated October 10, 1928, in respect of the taxes sought to be assessed for the fiscal year ended April 30, 1925, in that the Commissioner refused to allow a depletion rate of $9.375 per cord of timber.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

Petitioner, in making its income tax return for the fiscal year ended April 30, 1925, claimed depletion on certain timber owned by it in the aggregate sum of $34,492.50. This total sum was made up by adopting a depletion rate of $9.375 per cord on a total of 3,679.24 cords.

The Commissioner allowed a depletion rate on said 3,679.24 cords at the rate of $4.12 per cord, the total amount [4] of depletion, as per Treasury Department letter hereinabove referred to amounting to $15,158.30.

This constituted a reduction of the total amount of depletion claimed by taxpayer to $19,334.20 and resulted in adding the sum of $19,334.20 to the income of the taxpayer for the fiscal year ended April 30, 1925.

The taxpayer contends that a depletion rate of $9.375 per cord is the correct rate of depletion, and that depletion in the total sum of $34,492.50 should be allowed for the period in question.

WHEREFORE the Petitioner prays that when and if the Respondent hereinabove named shall file an answer to this petition, said Board shall set said

matter for hearing, and upon a hearing thereof, the Board shall find that the taxpayer was and is entitled to a depletion rate of $9.375 per cord on 3,679.20 cords, and is entitled to a total depletion in the sum of $34,492.50, and further that said Board find that the return of the taxpayer filed herein for the fiscal year ended April 30, 1925 (except as to changes heretofore proposed by the Commissioner, in which suggested changes the taxpayer has acquiesced), be found to be correct. The Petitioner further prays for such other relief as the nature of the case may require and which the Board may deem equitable and proper in the premises.

JOHN FRANCIS NEYLAN
Counsel for Petitioner, 901 Crocker
First National Bank Bldg.,
San Francisco, Calif. [5]

State of California
City and County of San Francisco.—ss.

I. Zellerbach, being duly sworn, says that he is the President of Zellerbach Paper Company, and that he is duly authorized to verify the foregoing petition and is familiar with the statements contained therein, and that the facts are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

[Seal] I. ZELLERBACH.

Subscribed and sworn to before me this Third day of December, 1928.

[Seal] LULU A. GODSIL

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 13, 1931. [6]

[Exhibit "A" referred to is set forth on pages ..... to ....., and is not printed here solely to avoid duplication and expense.]

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue by his attorney, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits all the material allegations contained in paragraph 1 of the petition.

2. Admits that the deficiency letter was mailed to the petitioner on October 10, 1928, but denies that a true copy of said deficiency letter is attached to the petition as alleged in paragraph 2 of the petition.

3. Denies all the material allegations contained in paragraph 3 of the petition, except the allegation that the tax in controversy is income tax for the fiscal year ended April 30, 1925, in the amount of $7,601.55.

4-(a). Denies that the respondent committed error in the determination of the deficiency as alleged

in paragraph 4 of the petition.

4-(b). Denies that any error was made in the determination of the deficiency referred to in deficiency letter dated October 10, 1928.

5. Denies all the material allegations contained in paragraph 5 of the petition. [25]

6. Denies generally and specifically each and every allegation in the petitioner's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
J. ARTHUR ADAMS,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed] United States Board of Tax Appeals. Filed Jan. 21, 1929. [26]

[Title of Court and Cause.]

AMENDED PETITION

Now comes the above named petitioner and amends its Petition heretofore filed in the above entitled matter and hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:D:60D:CAM) dated October 10th, 1928, and as a basis for its proceeding alleges as follows:

1. The Petitioner is a corporation organized under the laws of the State of California, and having its principal place of business at 534 Battery Street, San Francisco, California.

2. The notice of deficiency, a copy of which was attached to the original petition filed herein and marked Exhibit "A", and which is incorporated herein by reference thereto, was mailed to the petitioner on October 10, 1928.

3. The taxes in controversy are income taxes for the fiscal year ended April 30, 1925, and for Seven Thousand Six Hundred and One and 55/100 ($7,601.55) Dollars. [27]

4. The determination of tax as set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining the deficiency set forth in his sixty day letter dated October 10th, 1928 in relation to taxes due for the fiscal year ended April 30, 1925 by reason of the fact that the assessment of any additional taxes for said fiscal year and the collection of any additional taxes for said fiscal year and any proceedings in relation thereto were and are barred by the Statute of Limitations in force and effect at the time of the mailing of the deficiency letter dated October 10, 1928, and prior thereto and now in force and effect, and particularly by reason of the provisions of the Revenue Act of 1926 and more specifically Section 277(a)(1) thereof; also by reason of the provisions of the Revenue Act of 1928 and particularly Section 1 thereof.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner filed a consolidated income tax return on behalf of itself and its subsidiaries National Paper Products Company and the Sanitary Products Corporation on the 15th day of July, 1925; that said return was full and complete and had attached thereto all necessary schedules to enable the Commissioner of Internal Revenue to determine the tax due from said petitioner and its subsidiaries; that said return was filed in strict compliance [28] with the Revenue Act of 1924 then in force and effect, and that said return was neither false nor fraudulent.

(b) Said return was thereafter examined by the Commissioner of Internal Revenue and the tax reported therein, to-wit, the sum of One Hundred and Fifty Eight Thousand Three Hundred and Seventy Four and 05/100 ($158,374.05) Dollars, was thereafter assessed against this Petitioner by the said Commissioner and that thereafter the said tax was paid, said payments occurring on the following dates:

July 15, 1925, $39,593.51;
October 16, 1925, $39,593.52;
January 16, 1926, $39,593.51;
April 16, 1926, $39,593.51.

(c) That on the 26th day of February, 1926, the the Revenue Act of 1926 theretofore adopted by the Congress of the United States, was approved by the President of the United States. That said Revenue Act of 1926 became effective as of the date of its adoption, to-wit, February 26, 1926, except that certain parts thereof became effective retroactively as

of January 1st, 1925. That by reason of the retroactive provisions of said act increasing the rate of tax upon the net incomes of corporations during the calendar year 1925 from 12½% to 13%, the Commissioner of Internal Revenue issued Treasury Decision No. 3843 on the 28th day of February, 1926. That after the promulgation of the Treasury Decision No. 3843 [29] as above set forth, a copy of same was mailed to this Petitioner, by the Collector of Internal Revenue at San Francisco, California, requesting that the filing of an amended income tax return as provided for therein, be given immediate attention.

(d) That after the receipt of a copy of Treasury Decision No. 3843, as aforesaid, this Petitioner on the 14th day of May, 1926, filed with the Collector of Internal Revenue, at San Francisco, California, an amendment to its income tax return theretofore filed, wherein there was set forth the amount of tax originally reported in its income tax return and the additional amount of tax due by reason of the increase in rate from 12½% to 13% as provided in the Revenue Act of 1926; that the amount of tax reported therein was Two Thousand One Hundred and Eleven and 65/100 Dollars ($2,111.65), and on the 15th day of May, said additional tax was paid. That no schedules of any kind or character were attached to the amendment to the income tax return filed as aforesaid and no data were set forth therein except as hereinabove set forth.

(e) That the deficiency letter from which this appeal has been taken was mailed to the Petitioner

on October 10, 1928; that the Revenue Act of 1926, and particularly Section 277 (a) (1) governs the time within which an additional assessment may be made against this Petitioner for its fiscal year ended April 30, 1925; that [30] the period of time set forth in said act is three years; that more than three years elapsed between the date of the filing of its original income tax return on July 15, 1925 and the date of the issuance of the sixty day letter on October 10, 1928. That by reason of the facts set forth herein, said Commissioner is barred from assessing and/or collecting any additional taxes from this Petitioner for the fiscal year ended April 30th, 1925.

WHEREFORE, the Petitioner prays that upon a hearing of the above entitled matter the Board shall find that there are no additional taxes due from this Petitioner nor either or any of its subsidiaries for the fiscal year ended April 30th, 1925, further that said Board shall find that the assessment and the collection of any additional taxes from this Petitioner and/or either or any of its subsidiaries is barred by the Statute of Limitations and particularly by reason of the provisions of the Revenue Act of 1926. The Petitioner prays for such further and other relief as the nature of the case may require and which the Board may deem equitable and proper in the premises.

JOHN FRANCIS NEYLAN,
Counsel for the Petitioner,
901 Crocker First National Bank Bldg.
San Francisco, California [31]

State of California,
City and County of San Francisco.—ss.

S. Sonnenberg, being duly sworn, says that he is the Treasurer of Zellerbach Paper Company, and that he is duly authorized to verify the foregoing petition, and is familiar with the statements contained therein, and that the facts are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

S. SONNENBERG.

Subscribed and sworn to before me this Ninth day of June, 1931.

(Seal) LULU A. GODSIL,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires September 13, 1931.

[Endorsed]: United States Board of Tax Appeals. Filed at hearing June 10, 1931. [32]

[Title of Court and Cause.]

ANSWER TO AMENDED PETITION.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations of paragraph 1 of the amended petition.

(2) Admits the notice of deficiency was mailed to the petitioner on October 10, 1928.

(3) Admits the allegations of paragraph 3 of the amended petition.

(4) Denies the respondent erred in the determination of the deficiency and specifically denies that the respondent erred in the respects alleged in paragraph 4 (a) of the amended petition.

(5) (a) Admits petitioner filed a consolidated income tax return on behalf of itself and its subsidiaries National Paper Products Company and the Sanitary Products Corporation on the 15th day of July, 1925.

Admits that said return was filed under the provisions of the Revenue Act of 1924, then in force and effect, and further admits that said return was not a false or fraudulent return filed with intent to evade tax.

(b) Admits that after the filing of said return on July 15, 1925, the Commissioner duly assessed the tax shown thereon to be due, in the amount of $158,374.05. [33]

(c) Admits the first two sentences contained in subparagraph (c) of paragraph 5 of the amended petition; admits that on or about the 28th day of February, 1926, the Commissioner with the approval of the Secretary of the Treasury, issued Treasury Decision Number 3843; admits the allegations contained in the last sentence of subparagraph (c) of paragraph 5 of the amended petition.

(d) Admits that after the receipt of a copy of Treasury Decision 3843, petitioner filed a return on Form 1120-A under the provisions of the Revenue Act of 1926, and reported thereon additional tax due

in the amount of $2,111.65, which amount was thereafter duly assessed; admits that no schedules of any kind or character were attached to said last mentioned returns, and that no data was set forth therein except the insertion in line 25 of the same amount of net income, namely, $1,266,992.39, being the same amount of net income as disclosed on the consolidated return filed July 15, 1925.

(e) Admits that the deficiency letter from which this appeal has been taken was mailed to the petitioner on October 10, 1928.

Respondent denies each and every allegation contained in said amended petition except as hereinabove admitted or qualified.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

HENRY A. COX,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals. Filed Jul. 25, 1931. [34]

[Title of Court and Causes—Docket Nos. 41758, 41759.]

FINDINGS OF FACT AND OPINION.

Promulgated May 17, 1932.

The statutory period of limitation for assessment had not run on October 10, 1928, where a return for a fiscal year ended April 30, 1925 was filed pursuant to the 1924 Act on July 15, 1925, and a return for the same period showing increased tax was filed pursuant to the 1926 Act and T. D. 3843 on May 14, 1926.

John Francis Neylan, Esq., for the petitioners.

H. A. Cox, Esq., and F. R. Shearer, Esq., for the respondent.

The Commissioner determined the following deficiencies for the fiscal year ended April 30, 1925:

Zellerbach Paper Company	$ 7,601.55
National Paper Products Company	20,657.40

The only assignment of error is that the statute of limitations had barred assessment and collection of any additional taxes for this fiscal year prior to the day on which the notice of deficiency was mailed.

FINDINGS OF FACT.

The two petitioners are California corporations having their principal place of business in San Francisco.

On July 15, 1925 Zellerbach Paper Company filed a consolidated income tax return on behalf of itself and its subsidiaries National [35] Paper Products Company and Sanitary Products Corporation, un-

der the provisions of the Revenue Act of 1924. It included the income of all three companies. This was not a false or fraudulent return filed with intent to evade tax. The amount of tax shown to be due on this return, to-wit, $158,374.05, was duly assessed by the Commissioner. This return, as the affidavit states, was a return made pursuant to the Revenue Act of 1924.

The Revenue Act of 1926 was approved February 26, 1926. On February 28, 1926 the Commissioner of Internal Revenue issued Treasury Decision 3843 which was as follows:

> Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15th, 1926. Payment of the additional tax may be made at the time the return is filed or if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28th, 1926.

A copy of this decision was mailed to Zellerbach Paper Company by the Collector of Internal Revenue at San Francisco in a letter advising the corporation to give its immediate attention to the matter of filing new returns and paying additional tax

under the Revenue Act of 1926 for its fiscal year ending in 1925.

On May 14, 1925, after the receipt of this letter, the Zellerbach Paper Company filed a return on behalf of itself and its subsidiaries on Form 1120A, showing additional tax due in the amount of $2,111.65. This amount was thereafter duly assessed. This return, as the affidavit states, was a return made pursuant to the Revenue Act of 1926. No schedules were attached to this last mentioned return, and no data [36] were set forth therein except that in line 25 net income of $1,266,992.39 was set forth. This was the same amount of net income shown on the return filed July 15, 1925.

The notice of deficiency was mailed to the petitioners on October 10, 1928.

OPINION.

MURDOCK: The notice of deficiency was sent within four years of the date of filing of the first return, within three years from the date on which the Revenue Act of 1926 was approved, and within three years from the date upon which the last return was filed, but more than three years after the date upon which the first return was filed. The petitioners concede that the Commissioner may proceed to assess and collect the deficiencies unless the three-year period of limitation, provided by the Revenue Act of 1926, applies and began to run on July 15, 1925, the date upon which the first return was filed. [37]

We agree with the Commissioner that the return filed May 14, 1926, was the original return required under the 1926 Act to start the three-year period of section 277 (a) (1). We held in John Wanamaker Philadelphia, 8 B. T. A. 864, and in Hutchinson Company, 14 B. T. A. 367, that a return filed under one act would not start the period of limitation provided in a later act if additional tax was due under the new act for the period covered by the return. Other Board decisions to the same effect are Valentine-Clark Company, 14 B. T. A. 562 (reversed, 52 Fed. (2d) 346); Gus Holstine Dry Goods Company, 16 B. T. A. 1124; Isaac Goldmann Company, 17 B. T. A. 1103 (reversed, 51 Fed. (2d) 427); Myles Salt Company, Ltd., 18 B. T. A. 742 (reversed, 49 Fed. (2d) 232); Adams, Cushing & Foster, Inc., 19 B. T. A. 89; G. Corrado Coal & Coke Interests, Inc., 19 B. T. A. 691; and E. J. Lorie et al., 21 B. T. A. 612. Cf. Hill Goldwater, 21 B. T. A. 73. We refer to our discussion of the question in the cited cases. The circumstances under which the additional tax arises in this case are different from those under which the additional taxes arose in the cases just mentioned, but perhaps the difference is not material. We have, however, some additional reasons for our position not expressed in those cases. We want to again call particular attention to the discussion of a similar issue in United States v. Updike, 1 Fed. (2d) 550, and in Updike v. United States, 8 Fed. (2d) 913 (certiorari denied, 271 U. S. 661), affirming the above decision. [38] That case differs from the

present one only in degree. See also Davis Feed Company, 2 B. T. A. 616 and Covert Gear Co., Inc., 4 B. T. A. 1025.

Perhaps no revenue act specifically required the taxpayer to compute the tax as a part of his return. (See, however, section 240 (a), Revenue Act of 1926). Yet, a study of the various revenue acts, the rules and regulations of the Commissioner, the forms regularly used for making returns, and the way taxpayers themselves have interpreted the laws and regulations in making their returns, shows that a complete return is required and is understood to include a computation of the tax by the taxpayer himself. The acts gave the Commissioner authority to make and publish necessary rules and regulations. He required taxpayers to make their returns on certain forms which he furnished. These are called income tax returns. They provided a place for a computation of the tax by the taxpayer. The tax thus shown to be due on the return becomes due and payable within nine months. No further assessment is necessary. If the Commissioner determines that more tax is due than that shown on the return, he must assess the additional tax within a prescribed time. This is the assessment which must be made within the period of limitation. If Congress has not specifically provided that the taxpayer shall make the computation and show on his return the amount of tax he believes is due, it has at least given clear indication that it intended to impose this duty upon each taxpayer. For example, in section 273

of the Revenue Act of 1926 "deficiency" is defined to be: [39]

> (1) The amount by which the tax imposed by this title exceeds the amount shown as the tax *by the taxpayer* upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; * * * (Italics ours)

The petitioners did not compute, on the return filed in 1925, the tax which they believed to be due under the 1926 Act. Such a computation was impossible at the filing date. We think Congress intended that each corporation affected by the 1926 Act should file a return after the passage of that act, showing all required information, including the tax it believed to be due, and this return would start the three-year period for assessment. Furthermore, the Commissioner was required to make all needful rules and regulations for the enforcement of the act (section 1101); he required this taxpayer to file a new return; this rule was reasonable; and it must be given the force and effect of law. Maryland Casualty Company v. United States, 251 U. S. 342. The petitioners complied with the law and the ruling by filing the required return on May 14, 1926. Cf. section 1102 (a) and (b). This return, filed under the 1926 Act, could not amend the return filed under

the 1924 Act so that the latter would become a return under the 1926 Act. The petitioners, in filing their return under the 1926 Act, adopted as a part thereof so much of the return theretofore filed under the 1924 Act as was appropriate and useful. There was perhaps no necessity for them to duplicate the computation of net income and the supporting schedules already on file. But they knew that additional tax was due under the new act and they had not [40] made an income tax return under the new act until they filed a return showing what tax they honestly believed was due. The computation under the 1924 Act was quite a different thing from the computation under the 1926 Act as is apparent from an examination of the two returns in evidence in this case. The statutory period for assessment began to run on May 14, 1926 when the original return under the 1926 Act was filed.

Reviewed by the Board.

Judgment will be entered for the respondent.

VAN FOSSAN, dissenting: The principle announced in the decisions of the Board on which the prevailing opinion in these cases is predicated has been considered by the Court of Appeals of the District of Columbia and the Circuit Courts of Appeal in three of the cases cited and in each instance the Board has been reversed. Valentine-Clark Co., 14 B. T. A. 562; reversed, 52 Fed. (2d) 346; Isaac Goldmann Co., 17 B. T. A. 1103; reversed, 51 Fed. (2d) 427; Myles Salt Co., 18 B. T. A. 742; reversed, 49 Fed. (2d) 232. On further consideration of the

merits of the issue involved, I am convinced that the Board has been in error in all of these cases and that the petitioners should prevail.

GOODRICH agrees with this dissent. [41]

United States Board of Tax Appeals
Washington

Docket No. 41759

ZELLERBACH PAPER COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated May 17, 1932, it is

ORDERED and DECIDED: That there is a deficiency of $20,657.40 for the fiscal year ended April 30, 1925.

[Seal] (Signed) J. E. MURDOCK,
Member.

Entered May 19, 1932. [42]

[Title of Court and Cause.]

ORDER.

For good cause, it is

ORDERED that the last paragraph of the decision in this proceeding, entered under date of May 19, 1932, be and hereby is amended to read as follows:

"ORDERED and DECIDED: That there is a deficiency of $7,601.55 for the fiscal year ended April 30, 1925."

Entered May 25, 1932.

[Seal] (Signed) J. E. MURDOCK,
Member.

A true copy: Teste.

[Seal] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals. [43]

[Title of Court and Cause.]

PETITION FOR THE REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes Zellerbach Paper Company, by its attorneys, Messrs. John Francis Neylan, and J. Paul Miller, and respectfully shows:

I.

Jurisdiction for Review.

This is a proceeding for review by the United States Circuit Court of Appeals for the Ninth Cir-

cuit of a decision of the United States Board of Tax Appeals, entered on the 19th day of May, 1932, as amended by that certain order entered May 25, 1932, and determining a deficiency in income and profits taxes for the fiscal year ending April 30, 1925, against your petitioner, in the sum of $7,601.55. [44]

This Petition is filed in pursuance of the provisions of Section 1001 of the Act of Congress approved on the 26th day of February, 1926, entitled the Revenue Act of 1926, as amended by the Revenue Act of 1928 and the Revenue Act of 1932.

II.

Your petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City and County of San Francisco, State of California;

For the fiscal year ending April 30, 1925, Petitioner filed its income and profits tax return, on the 15th day of July, 1925, with the Collector of Internal Revenue for the First District of California, whose office was and is located in the City and County of San Francisco, State of California.

III.

Nature of Controversy.

The nature of the controversy is as follows:

The period involved is the fiscal year ended April 30, 1925. For this period respondent proposes that a deficiency of $7,601.55 be assessed against petitioner.

The Petitioner has conceded that the commissioner may proceed to assess and collect this amount as a deficiency unless the three year period of limitation, provided by the Revenue Act of 1926, applies and began to [45] run on July 15, 1925, the date on which the first return was filed.

On that date, to-wit: July 15, 1925, petitioner filed a consolidated income tax return under the Revenue Act of 1924, on behalf of itself and its affiliated corporations, to-wit; National Paper Products Company and Sanitary Products Corporation, with the Collector of Internal Revenue in San Francisco. The Revenue Act of 1924 provided for a tax of twelve and one-half (12½%) per cent on the net income of corporations and in the return filed on July 15, 1925 the tax was computed on that basis and the sum shown to be due, to-wit: $158,374.05 was thereafter assessed by the Commissioner and paid. This return was neither false nor fraudulent, nor was it filed with the intent to evade the tax rightfully due, or any part thereof.

Thereafter and on February 26, 1926, the Revenue Act of 1926 was adopted. It provided for a tax of thirteen (13%) per cent on the net income of corporations for the calendar year of 1925, (and for thirteen and one-half (13½%) per cent thereafter) in lieu of the twelve and one-half (12½%) per cent tax imposed for the same period, by the Revenue Act of 1924.

After the enactment of the 1926 Act the Commissioner furnished petitioner with a copy of Treasury Decision 3843, which provided that any

corporation becoming liable [46] for an additional tax under the 1926 Act should file a new return, and furnished petitioner with a form designated as "U. S. Internal Revenue Form 1120 A, Revised April 1926."

The petitioner filled in the heading of this form, copied into it from the original return filed on July 15, 1925, the figures under the heading "Computation of Tax", computed the additional tax due, executed the document by its Vice President and Assistant Secretary, and paid $2,111.65 the additional tax shown to be due. This return was filed with, and the additional tax paid to, the Collector of Internal Revenue in San Francisco, on May 14, 1926.

The return, upon its receipt by the Government, was designated as an amended return. Further evidence of its having been received as an amended return is found in a notation made upon the return itself, to-wit; "See original return".

A sixty day letter was issued to petitioner under date of October 10, 1928, and within sixty days thereafter petitioner appealed to the United States Board of Tax Appeals and thereafter filed its amended petition setting up as a defense the statute of limitations. Prior thereto the amount of deficiency was stipulated, petitioner reserving the defense of the statute of limitations. [47]

The statute of limitations under the 1924 Act is four years (Sec. 277 (a)); under the 1926 Act, three years (Sec. 277 (a) (1)).

On appeal, the Board of Tax Appeals upheld the

position of the Commissioner and held that the return filed on May 14, 1926, was the original return required under the 1926 Act to start the running of the three year statutory period, and that as the deficiency letter was mailed within three years of that date, to-wit: on October 10, 1928, it was mailed within the time required by law, and that the petitioner was liable for a deficiency of $7,601.55.

There are two questions involved:

First: Does the four year statute as provided in the 1924 Act apply, or does the three year period under the 1926 Act apply?

Second: Did the statutory period (whether three years or four years) begin to run with the filing of the original return, or only at the time of the filing of the amended return?

IV.

Assignments of Error.

The Petitioner states that in the record and proceedings before the Board of Tax Appeals, and in the decision and the final order of redetermination rendered and entered by the Board of Tax Appeals, manifest error [48] occurred which intervened to the prejudice of the Petitioner and the Petitioner assigns the following errors, and each of them, which it avers, occurred in said record, proceedings, decision and final order of redetermination, and upon which it relies to reverse said decision and final order of redetermination so rendered and returned by the Board of Tax Appeals, to-wit:

(a) The Board of Tax Appeals erred in holding

that the collection of the deficiency in question was not barred by the statute of limitations;

(b) The Board of Tax Appeals erred in holding that the statute of limitations began to run only with the filing of the return on May 14, 1926;

(c) The Board of Tax Appeals erred in not holding that the three year period of limitation commenced to run from the filing of the original return on July 15, 1925;

(d) The Board of Tax Appeals erred in not holding that the return filed on May 14, 1926 was merely an amended return;

(e) The Board of Tax Appeals erred in not holding that the three year period of limitations began to run from the filing of the original return, even though an amended return was filed on May 14, 1926;

(f) The Board of Tax Appeals erred in making the following statement in its opinion, which statement is not supported by the evidence; [49]

"We agree with the Commissioner that the return filed May 14, 1926, was the original return required under the 1926 Act to start the three year period of section 277 (a) (1)."

(g) The Board of Tax Appeals erred in finding a deficiency against the Petitioner for the fiscal year ending April 30, 1925, in the sum of $7,601.55;

(h) The Board of Tax Appeals erred in rendering decision for respondent.

WHEREFORE, your petitioner prays:

(1) That this Honorable Court review the decision of the United States Board of Tax Appeals.

(2) That the transcript of the record be prepared in accordance with the law and with the rules of this Honorable Court, and transmitted to the Clerk of this Court for filing.

(3) That appropriate action be taken by this Honorable Court to the end that the errors complained of may be reviewed and corrected.

(4) For such other and further relief as to this Honorable Court may seem fit and proper.

ZELLERBACH PAPER COMPANY,
By THOMAS McLAREN,
Vice-President.
JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Sreet,
San Francisco, California. [50]

State of California,
City and County of San Francisco.—ss.

Thomas McLaren, being first duly sworn, deposes and says:

That he is the Vice-President of Zellerbach Paper Company, the Petitioner in the above entitled matter; that as such he had authority to, and did sign the above and foregoing Petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except those matters which are therein alleged on information or belief, and that as to those matters he believes it to be

true; that the said Petition is filed in good faith, and not for the purpose of delay.

THOMAS McLAREN.

Subscribed and sworn to before me this 21st day of October, 1932.

[Seal] JAMES F. McCUE,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: United States Board of Tax Appeals. Filed November 1, 1932. [51]

[Title of Court and Cause.]

NOTICE OF FILING OF PETITION FOR REVIEW.

To: C. M. Charest, Esq.,
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.
Attorney for Respondent.

PLEASE TAKE NOTICE that the above named Petitioner did, on the 1st day of November, 1932, file with the United States Board of Tax Appeals a Petition for Review of the decision of said Board in the above entitled cause by the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which said Petition for Review is herewith served upon you.

JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Street,
San Francisco, California.

Service of the foregoing notice and service of a copy of the Petition for Review mentioned in said Notice, is hereby accepted this 1st day of November, 1932.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[Endorsed]: United States Board of Tax Appeals. Filed Nov. 1, 1932. [52]

PETITIONER'S EXHIBIT 3.

TREASURY DEPARTMENT.
INTERNAL REVENUE SERVICE.

San Francisco, Calif.

Office of the Collector
First District of
California
In Reply Refer to
Room 109—FFL

Gentlemen:

It is noted that the income tax returns for your corporation are filed on a fiscal year basis therefore the following is submitted for your information, in regard to time for filing new returns and paying additional tax under the Revenue Act of 1926 for corporations with fiscal years ending in 1925.

(T.D. 3843)

"Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the

Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15th, 1926. Payment of the additional tax may be made at the time the return is filed or if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28th, 1926."

D. H. BLAIR,
Commissioner.

You should give this matter your immediate attention.

Respectfully,
JOHN P. McLAUGHLIN,
Collector.

JPMcL/FEL [53]

[Endorsed]: U. S. Board of Tax Appeals. Div. 9. Docket 41758-41759. Admitted in Evidence June 10, 1931. Petitioner's Exhibit 3.

(462M)

PETITIONER'S EXHIBIT 4.
TREASURY DEPARTMENT
Washington

Oct. 10, 1928.

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and Refer to
Zellerbach Paper Company,
534 Battery Street,
San Francisco, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of $22,461.95 for the years 1924 and 1925 and an overassessment of $2,328.06 for the year 1926 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Wash-

ington, D. C., for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,

Commissioner.

By C. B. ALLEN,

Deputy Commissioner.

Enclosures:

Statement

Form 866

Form 882

Schedules 1 to 35 inclusive.

[Endorsed]: U. S. Board of Tax Appeals Div. 9 Docket 41758-41759 Admitted in Evidence June 10, 1931. Petitioner's Exhibit 4. [54]

IT:AR:D:60D
CAM

STATEMENT OF RETURNS EXAMINED
AND
RESULTING TAX LIABILITY

Company	Fiscal Years	Forms	Deficiency in Tax	Over-assessment
Zellerbach Paper Company				
San Francisco, California.	April 30, 1924	1120 A. Cons.	$14,860.40	
	1925	1120 A. Cons.	7,601.55	
	1926	*		2,328.06
National Paper Products Company,				
San Francisco, California.	1924	#	14,649.82	
	1925	#	20,657.40	
	1926	*		11,849.04

* Income consolidated with return filed by Zellerbach Corporation, San Francisco, California.

Income consolidated with return filed by Zellerbach Paper Company, San Francisco, California.

The adjustments producing the above-stated results are the same as shown in Bureau letter dated August 31, 1928 and are shown in the attached Schedules 1 to 35, inclusive.

Certificates of Overassessments for the amounts shown above will be issued through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with the provisions of Section 284 (a) of the Revenue Act of 1926.

A carbon of this letter has been mailed to John Francis Neylan in accordance with the authorization contained in your power of attorney running to him. [55]

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 1

Net Income

Net income as disclosed by return		$432,957.61
As corrected		550,939.61
Net adjustment		$117,982.00
Unallowable deductions and additional income:		
(a) Bad Accounts	$81,312.68	
(b) Auto Insurance	5,055.10	
(c) Depreciation	47,429.00	
Total		133,796.78
Nontaxable income and additional deductions:		
(d) Oregon State Income Tax	$ 202.59	
(e) Appreciation	15,612.19	
Total		15,814.78
Net adjustment as above		$117,982.00

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 2

Explanation of Items Changed

(a) Bad accounts claimed on return over book deduction		$81,312.68
Decrease reserve for losses claimed		3,917.45
Total		$85,230.13
Reserve April 30, 1923	$73,043.22	
Reserve April 30, 1924	69,125.77	
Decrease		3,917.45
Excess deduction (Double deduction)		$81,312.68

[56]

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 7

Consolidated net income 1924

Net income as corrected:		
Zellerbach Paper Company (Schedule 1)	$550,939.61	
National Paper Products Company (Schedule 3)	759,215.79	
Total		$1,310,155.40
Net Losses As Corrected:		
The Sanitary Products Corporation, (Schedule 5)		8,704.94
Consolidated net income corrected		$1,301,450.46

SCHEDULE 8

Computation of Tax - 1924

Income Tax

Net income for taxable year (Schedule 7)	$1,301,450.46
Income tax at 12½%	$ 162,681.31

SCHEDULE 9

Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 550,939.61	$ 68,409.88
National Paper Products Company	759,215.79	94,271.43
Total	$1,310,155.40	$162,681.31

SCHEDULE 10

Allocation of Original Tax, assessed
Account #400008, Oct. 1924

Name of Company	Income	Amount
Zellerbach Paper Company	$ 432,957.61	$ 53,549.48
National Paper Products Company	643,755.67	79,621.61
Total	$1,076,713.28	$133,171.09

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 11
Computation of Tax - 1924

National Paper Products Company	
Total tax liability - Allocated, Schedule 9	$ 94,271.43
Previously assessed - Allocated, Schedule 10	79,621.61
Additional tax	$ 14,649.82

SCHEDULE 12
Computation of Tax - 1924

Total tax liability - Allocated, Schedule 9	$ 68,409.88
Previously assessed - Allocated, Schedule 10	53,549.48
Additional tax	$ 14,860.40

[50]

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 13

Net Income

Net income as disclosed by return		$490,802.78
As corrected		548,738.32
Net adjustment		$ 57,935.54
Unallowable deductions and additional income:		
(a) Bad Accounts	$57,884.22	
(b) Auto Insurance Reserve	3,925.57	
(c) Depreciation	13,945.21	
Total		$ 75,755.00
Nontaxable income and additional deductions:		
(d) State Income Tax	$ 2,083.86	
(e) Refund on purchases	10,354.93	
(f) Appreciation	5,380.67	
Total		$ 17,819.46
Net adjustment as above		$ 57,935.54

Zellerbach Paper Company. Year ended April 30, 1925

SCHEDULE 14

Explanation of Items Changed

(a) Bad Accounts claimed on return over book deduction		$ 57,884.22
Increase in reserve for losses		56.44
Net claimed		$ 57,827.78
Reserve - 4/30/1925	$69,182.21	
4/30/1924	69,125.77	
Increase		$ 56.44
Excess deduction (Double deduction)		$ 57,884.22

[51]

(b) Increase in reserve for auto insurance increases income accordingly:		
Reserve 4/30/1925	$22,327.49	
4/30/1924	18,401.92	
Increase		$ 3,925.57

Schedule 14
(Continued)

(c) Depreciation claimed on return (Machinery)	39,395.49
Taken on books and allowed	25,450.28
Excess	$13,945.21

(d) See explanation Schedule 2 (d).

(e) Income is decreased on account of error in entry of refund from American Investment and Realty Company on account of price of Olympic Paper and Power Company Stock adjusted in 1926, reversed herein and allowed 1925.

(f) See explanation Schedule 2 (e).

Zellerbach Paper Company. Year ended April 30, 1925

SCHEDULE 15

Net Income

National Paper Products Company.

Net income as disclosed by return		$787,864.49
As corrected		947,909.38
Net adjustment		$160,044.89
Unallowable deductions and additional income:		
(a) Bad Accounts	$ 6,768.17	
(b) Reserve for losses	4,133.16	
(c) Depreciation	129,809.36	
(d) Depletion	19,334.20	
Net adjustment as above		$160,044.89

[52]

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 16

Explanation of Items Changed

(a)	Bad accounts claimed on return over book deduction		$ 6,768.17
	Increase in reserve for losses claimed (Not allowable)		4,133.16
			$ 10,901.33
	Reserve 4/30/1925	$29,556.53	
	4/30/1924	25,423.37	
	Increase		4,133.16
	Excess (double deduction)		$ 6,768.17
(b)	See analysis of reserve above; increase in reserve, increases income accordingly.		
(c)	Depreciation for 1925 reduced in 1926 and reversed herein by restoring to income in 1925 and allowing in 1926.		

Zellerbach Paper Company. Year ended April 30, 1925

Schedule 16
(Continued)

(d) Depletion claimed	$34,492.50
Corrected	
3,679.20 cords at $4.12 in accordance with Engineers report for prior years	15,158.30
Net disallowed	$19,334.20

SCHEDULE 17
Net Income

The Sanitary Products Corporation.

Net loss as disclosed by return		$ 11,674.88
As corrected - net loss		6,558.40
Net adjustment		$ 5,116.48
Unallowable deductions and additional income:		
(a) Reserve for losses	$ 2,848.62	
(b) Depreciation	2,267.86	
Net adjustment as above		$ 5,116.48

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 18

Explanation of Items Changed

(a) Increase in reserve for losses, increases income accordingly:		
Reserve April 30, 1925	$ 7,975.82	
April 30, 1924	5,127.20	
Increase		$ 2,848.62
(b) Depreciation claimed, not on books, disallowed, excess claimed		$ 2,267.86

SCHEDULE 19

Consolidated Net Income - 1925

Net Income as Corrected:		
Zellerbach Paper Company, (Schedule 13)	$548,738.32	
National Paper Products Co. (Schedule 15)	947,909.38	
Total		$1,496,647.70
Net Losses As Corrected:		
The Sanitary Products Corporation (Schedule 17)		6,558.40
Consolidated net income corrected		$1,490,089.30

Zellerbach Paper Company. Year ended April 30, 1925

SCHEDULE 20
Computation of Tax - 1925
Income Tax

Net income for taxable year (Schedule 19)	$1,490,089.30
Income tax at 12½% - 1924 rated (8/12)	124,174.11
Income tax at 13% - 1925 Rates (4/12)	64,570.54
Total tax assessable	$188,744.65

[54]

SCHEDULE 21
Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 548,738.32	$ 69,202.27
National Paper Products Company	947,909.38	119,542.38
Total	$1,496,647.70	$188,744.65

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 22

Allocation of Tax Assessed

Account #400,011, July 1925 158,374.05
Account #400,568, May 1926 2,111.65

Name of Company	Income	Amount
Zellerbach Paper Company	$ 490,802.78	$ 61,600.72
National Paper Products Company	787,864.49	98,884.98
Total	$1,278,667.27	$160,485.70

SCHEDULE 23

Computation of Tax - 1925

National Paper Products Company

Total tax liability - allocated, Schedule 21	$119,542.38
Previously assessed - allocated, Schedule 22	98,884.98
Additional Tax	$ 20,657.40

Zellerbach Paper Company. Year Ended April 30, 1925.

SCHEDULE 24
Computation of Tax - 1925

Total tax liability - Allocated, Schedule 21	$ 69,202.27
Previously assessed - Allocated, Schedule 22	61,600.72
Additional tax	$ 7,601.55

Year Ended April 30, 1926.

SCHEDULE 25
Net Income

Net income as disclosed by return	$833,563.82
As corrected	813,987.33
Net adjustment	$ 19,576.49
Unallowable deductions and additional income:	
(a) Reserve for auto insurance	$ 1,550.85

Schedule 25
(Continued)

Nontaxable income and additional deductions:			
(b) Reserve for losses		$ 365.81	
(c) Depreciation adjustment		13,731.80	
(d) M. M. Cohen, Trustee		7,029.74	
Total			21,127.35
Net adjustment as above			19,576.49

SCHEDULE 26
Explanation of Items Changed

(a) Auto insurance claimed on return			$ 12,500.00
Reserve April 30, 1925		$22,327.49	
April 30, 1926		11,378.35	
Decrease allowable			10,949.14
Excess deducted			$ 1,550.86

Zellerbach Paper Company. Year ended April 30, 1926.

Schedule 26
(Continued)

(b) Reserve for losses restored on return			$ 2,170.75
Reserve 4/30/1926	$70,987.15		
4/30/1925	69,182.21		
Net increase corrected			1,804.94
Excess restored			$ 365.81
(c) Depreciation for 1925 reduced in 1926 and reversed herein by allowing in 1926.			
(d) Book income is decreased by income included in account of M. M. Cohen, Trustee, which was restored to income of prior years.			
1920	$ 4,971.75		
1921	2,057.99		
Total			$ 7,029.74

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 27

National Paper Products Company.

Net Income

Net income as disclosed by return		$1,407,048.93
As corrected		1,313,597.30
Net adjustment		$ 93,451.63
Unallowable deductions and additional income:		
(a) Adjusting error	.02	
(b) Goodwill	$36,357.71	
Total		$ 36,357.73
Nontaxable income and additional deductions:		
(c) Depreciation		129,809.36
Net adjustment as above		$ 93,451.63

vs. Guy T. Helvering

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 28

Explanation of Items Changed

(a)	Decrease in reserve for losses claimed		$ 598.59
	Reserve - 4/30/1925	$29,556.53	
	4/30/1926	28,957.96	
	Net decrease		598.57
	Excess deducted		$ .02
(b)	Renshaw, Jones and Sutton Company stock purchased April 30, 1927, cost		$349,888.00
	Assets and liabilities taken over at book value and stock conceled, net worth (May 31, 1925)		313,530.29
	Loss claimed		$ 36,357.71

Disallowed as no deductible loss has been sustained, as you purchased and received value for the amount in good will.

(c) Contra adjustment (Schedule 16 (c).

Zellerbach Paper Company. Year ended April 30, 1926

SCHEDULE 29
Net Income

The Sanitary Products Company.

Net loss as disclosed by return			$ 7,964.25
As corrected - net loss			9,157.75
Net adjustment			$ 1,193.50
Nontaxable income and additional deductions:			
(a) Reserve for losses decreased, decreases income accordingly.			
Reserve 4/30/1925	$ 7,975.82		
4/30/1926	5,316.31		
Decrease		$2,659.51	
Claimed on return	$2,659.51		
	1,193.50	1,466.01	
Net adjustment as above		$1,193.50	

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 30
Consolidated Net Income 1926.

Net Income As Corrected:		
Zellerbach Paper Company (Schedule 25)	$ 813,987.33	
National Paper Products Co., (Schedule 27)	1,313,597.30	
Total		$2,127,584.63
Net Losses As Corrected:		
The Sanitary Products Company, (Schedule 29)		9,157.75
Consolidated net income corrected		$2,118,426.88

SCHEDULE 31

Computation of Tax - 1926

Income Tax

Net income for taxable year (Schedule 30)	$2,118,426.88
Income tax at 13% - 1925 Rated (8/12)	$ 183,596.99
Income tax at 13½% - 1926 Rates (4/12)	95,329.21
Total tax assessable	$ 278,926.20

SCHEDULE 32

Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 813,987.33	$106,713.68
National Paper Products Company	$1,313,597.30	172,212.52
Total	$2,127,584.63	$278,926.20

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 33

Allocation of Tax Assessed

Consolidated

Return Zellerbach Corporation,
Account #400011, July 1926

Name of Company - Group #2	Percent	Amount
Zellerbach Paper Company	$ 833,563.82	$109,041.74
National Paper Products Company	1,407,048.93	184,061.56
Group #1		
American Investment & Realty Company	102,401.82	
Washington Pulp & Paper Corporation	399,095.76	
Northwestern Power and Light Company	8,287.85	
Zellerbach Corporation	Loss	
Total - Group #1	$ 509,785.43	$ 66,687.02
Grand Total	$2,750,398.18	$359,790.32

Zellerbach Paper Company. Year ended April 30, 1926

SCHEDULE 34

Computation of Tax - 1926

National Paper Products Company	
Total Tax Liability - Allocated, Schedule 32	$172,212.52
Previously assessed - Allocated, Schedule 33	184,061.56
	$ 11,849.04

SCHEDULE 35

Computation of Tax - 1926

Zellerbach Paper Company.	
Total Tax Liability - Allocated, Schedule 32	$106,713.68
Previously assessed - Allocated, Schedule 33	109,041.74
Overassessment	$ 2,328.06

[60]

TREASURY DEPARTMENT
Washington

(462M) Oct. 10, 1928.

Office of
Commissioner of Internal Revenue
Address reply to
Commissioner of Internal Revenue

National Paper Products Company,
1789 Montgomery Street,
San Francisco, Calif.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of $35,307.22 for the years 1924 and 1925 and an overassessment of $11,849.04 for the years 1926 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:p-7.

Respectfully,
D. H. BLAIR, Commissioner.
By C. B. ALLEN, Deputy Commissioner.

Enclosures
Statement Form 866 Form 882 Form 7929

[Endorsed]: U. S. Board of Tax Appeals. Div. 9. Docket 41758 & 41759. Admitted in Evidence June 10, 1931. Petitioner's Exhibit 5. [61]

IT:AR:D:60D
CAM

STATEMENT OF RETURNS EXAMINED
AND
RESULTING TAX LIABILITY

Company	Fiscal Years	Deficiency in Tax	Over-assessment
National Paper Products Company, San Francisco, California.	1924	$14,649.82	
	1925	20,657.40	
	1926		$11,849.04

The adjustments producing the above-stated results are the same as shown in Bureau letter dated August 31, 1928 and are shown in Schedule attached to a letter addressed to Zellerbach Paper Company, San Francisco, California.

A certificate of overassessment will be issued for the amount shown above through the office of the Collector of Internal Revenue for your district, and will be applied by that official in accordance with the provisions of section 284 (a) of the Revenue Act of 1926. [62]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE

The above-entitled cause came on for hearing before The Honorable E. H. Van Fossan, Member of the United States Board of Tax Appeals on the 10th day of June, 1931, at Oakland, California, there being present the Petitioner, by its Counsel, Messrs. John Francis Neylan, and J. Paul Miller, and the Respondent, by its Counsel, Messrs. H. A. Cox and F. R. Shearer (C. M. Charest, Esq., General Counsel.)

Thereupon the following proceedings were had and testimony heard by said Member pertaining to the issues involved in the Petition for Review filed with the United States Board of Tax Appeals on December 6, 1928.

Prior to the introduction of testimony, Counsel for Petitioner moved for the consolidation of the

above-entitled cause with one additional case, to-wit, Zellerbach Paper [63] Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, United States Board of Tax Appeals Docket No. 41759, which motion was granted.

Thereupon Counsel for Petitioner moved for leave to file an Amended Petition, the purpose of which was to limit the question involved to the Statute of Limitations; there being no objection on the part of Counsel for the Respondent, said motion was granted, and the amended Petitions in each of the cases referred to herein were filed. Said amended Petitions are a part of the record herein.

Thereupon Counsel for the Respondent dictated an informal Answer to said amended Petitions, and thereafter a written Answer to said amended Petitions was filed, which Answer is a part of the record herein.

Thereupon Counsel for Petitioner offered in evidence a Consolidated Income Tax Return, on Form 1120-A, furnished by the Treasury Department of the United States, filed by Zellerbach Paper Company on behalf of itself and its subsidiaries, National Paper Products Company and Sanitary Products Corporation for the fiscal year May 1st, 1924, to and including April 30th, 1925; said return was received in evidence and marked "Petitioner's Exhibit No. 1."

Counsel for Petitioner then offered in evidence an additional document on Form 1120-A revised April, 1926, furnished by the Treasury Department of the United States, and headed [64] "Corporation In-

come Tax Return for Fiscal Year 1925." The word "amended" which appears on the face of said document was stamped there by a representative of the Commissioner of Internal Revenue. This document sets forth additional taxes due to the United States of America in the sum of $2,111.65, for the period May 1, 1924 to April 30, 1925, and was filed with the Collector of Internal Revenue, First District of California, San Francisco, California, May 14, 1926, by Zellerbach Paper Company, on behalf of itself and its subsidiaries, National Paper Products Company and Sanitary Products Corporation. Said document was received in evidence as "Petitioner's Exhibit No. 2."

Counsel for Petitioner thereupon offered in evidence a letter bearing the mimeographed signature of John P. McLaughlin on the stationery of the Treasury Department, Internal Revenue Service, San Francisco. Said document was thereupon received in evidence and designated as "Petitioner's Exhibit No. 3."

Thereupon the following proceedings occurred:—

> "Mr. Neylan: I asked counsel for the Government if he would stipulate that this Exhibit No. 3 was received by the Zellerbach Paper Company in the ordinary course of the mail; otherwise, it will put us to the necessity of producing a witness here to testify that that was received. [65]
>
> "Mr. Shearer: That is stipulated to now, and I think it was also covered in the answer as being true.

"Mr. Neylan: Yes, I think you are correct about that.

"The Member: That applies to Exhibit 3?

"Mr. Shearer: Yes."

Thereupon Counsel for the Petitioner called attention to the fact that there was some question as to the accuracy of the copy of the sixty-day letter attached to the Petition filed in the above-entitled matter, whereupon the original sixty-day letter forwarded by the Commissioner of Internal Revenue to Zellerbach Paper Company, and the original sixty-day letter forwarded by the Commissioner of Internal Revenue to National Paper Products Company were offered and received in evidence and designated as follows: Sixty-day letter addressed to Zellerbach Paper Company designated as "Petitioner's Exhibit No. 4;" sixty-day letter addressed to National Paper Products Company designated as "Petitioner's Exhibit No. 5."

Thereupon the following proceedings took place:

"Mr. Neylan: I will now ask Government counsel if they will stipulate that no other return was ever filed by either of these corporations in respect of the tax for the year under review?

"Mr. Shearer: That is agreed to. Counsel intends to include in that stipulation the fact that no return on Form 1122 was filed by the subsidiaries? [66]

"Mr. Neylan: My understanding is that the only returns ever filed by the parent and subsidiaries from my point of view is the original, and

the other is merely an amended return, and my understanding is those were the only returns ever made by the parent or the subsidiaries.

"Mr. Shearer: The Regulations of the Department, I may state to counsel, for a number of years, have required subsidiary corporations to file a return on forms 1122, which is subsidiary to the main return on Form 1120. So far as I know such returns were never filed by the subsidiaries in this case, and I am willing to stipulate with counsel that Exhibit 1 and Exhibit 2 are the only returns ever filed by either the Zellerbach Paper Company or any of its subsidiaries, the National Paper Products Company and the Sanitary Products Corporation, for the fiscal year 1925.

"The Member: Is there anything further?

"Mr. Neylan: That is our case, your Honor.

"The Member: Anything on behalf of the Government?

"Mr. Cox: We have nothing."

The foregoing is the substance of the evidence adduced at the trial of this proceeding pertaining to the issues involved in this appeal.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner
1 Montgomery Street,
San Francisco, California. [67]

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of

Tax Appeals, and the same is approved by the undersigned, C. M. Charest, General Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Sgd.) C. M. CHAREST
General Counsel. (S.)
Bureau of Internal Revenue

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this ..... day of ....., 1933.

.....
Member, United States Board
of Tax Appeals

[Endorsed]: Approved and Ordered Filed this 15 day of Feb., 1933.

(Sgd.) J. E. MURDOCK
Member (S)

[Endorsed]: United States Board of Tax Appeals. Filed February 15, 1933. [68]

[Title of Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days from the date of the filing of the Petition for Review in the above entitled case, transmit to the Clerk

of the United States Circuit Court of Appeals for the Ninth Circuit certified copies of the following documents:

1. The docket entries of all proceedings before the Board of Tax Appeals in the above entitled cause;

2. The Petition of the taxpayer, together with deficiency letter dated October 10, 1928, attached to which is "Statement of Returns Examined and Resulting Tax Liability;" together with sixty day letter dated October 10, 1928 addressed to Zellerbach Paper Company, parent of Petitioner, which sixty day letter was incorporated in sixty day letter issued to this Petitioner by reference thereto. [69]

3. Answer of Commissioner of Internal Revenue;

4. Amended Petition;

5. Commissioner's Answer to Amended Petition;

6. Findings of Fact and Opinion of Board, including Dissenting Opinion;

7. Decision of the Board entered May 19, 1932;

8. Order of the Board correcting decision entered under date of May 19, 1932, said Order having been entered May 25, 1932;

9. Petition for Review to the Circuit Court of Appeals for the Ninth Circuit;

10. Notice of Filing Petition for Review;

11. Petitioner's Exhibit number one, being Income Tax Return filed by Zellerbach Paper Company, parent of Petitioner on behalf of the said Zellerbach Paper Company and this Petitioner and Sanitary Products Corporation for the fiscal year ended April 30, 1925;

12. Petitioner's Exhibit number two, being document designated as Amended Return filed by Zellerbach Paper Company, parent of Petitioner on behalf of the said Zellerbach Paper Company, this Petitioner and Sanitary Products Corporation on May 14, 1928;

13. Petitioner's Exhibit number three, same being a circular letter bearing the mimeographed signature of [70] J. P. McLaughlin, Collector of Internal Revenue, San Francisco, California;

14. Petitioner's Exhibit number four, and Petitioner's Exhibit number five, being original sixty day letters issued by Commissioner of Internal Revenue to Zellerbach Paper Company and to National Paper Products Company respectively, these Exhibits having been offered in lieu of sixty day letters attached to Petitions filed by said companies on account of typographical errors therein;

15. Statement of Evidence;

16. This Praecipe;

the foregoing to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner
1 Montgomery Street,
San Francisco, California.

[Endorsed]: United States Board of Tax Appeals. Filed November 23, 1932. [71]

[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 71, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 28th day of March, 1933.

[Seal] B. D. GAMBLE
Clerk,
United States Board of Tax Appeals.

[Endorsed]: No. 7140. United States Circuit Court of Appeals for the Ninth Circuit. National Paper Products Company, a corporation, Petitioner. vs. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed April 26, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Nos. 7140 AND 7141

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

NATIONAL PAPER PRODUCTS COMPANY, a Corporation,
Petitioner,
vs.
GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.
} No. 7140

ZELLERBACH PAPER COMPANY, a Corporation,
Petitioner,
vs.
GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.
} No. 7141

Upon Petitions to Review Orders of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals for the Ninth Circuit

ZELLERBACH PAPER COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 41,759
NATIONAL PAPER PRODUCTS COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 41,758

STIPULATION AND ORDER FOR CONSOLIDATION ON APPEAL.

Whereas, the two above-named cases, upon motion of John Francis Neylan, Counsel for Petitioners, and consented to by Counsel for Respondent, were consolidated by order of the United States Board of Tax Appeals for trial; and

Whereas, after said trial by the United States Board of Tax Appeals of said consolidated cases, a joint opinion applying to said two cases was rendered by said Board; and

Whereas, petitions for the review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit have been filed by the Petitioners with the Clerk of the United States Board of Tax Appeals, and the appeals perfected; and

Whereas, the same point of law is involved in each of said cases, to-wit: is the collection from the Petitioners of the additional tax claimed by the Respondent for the fiscal year ending April 30th, 1925, barred by the Statute of Limitations; and

Whereas, it is the opinion of the respective Counsel for the parties to the said cases that it would most suit their convenience in the handling of the said cases on appeal, and would also be of great assistance to the said United States Circuit Court of Appeals in its determination of said cases, if said cases should be consolidated for purposes of appeal;

It is hereby stipulated by and between John Francis Neylan and J. Paul Miller, Counsel for each of the Petitioners in the above-entitled cases, and C. M. Charest, General Counsel, Bureau of Internal Revenue, Counsel for the Respondents in each of said cases,

1. That said cases may be consolidated for the purpose of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of oral argument before said Court;

2. That but a single printed transcript of record on appeal be prepared by and printed under the direction of the Clerk of said Court, said Clerk to avoid including in said printed transcript more than

one copy of such matters and documents as are duplicated in the certified transcripts of record sent up to him by the Clerk of the United States Board of Tax Appeals;

3. That on all occasions, when pursuant to law or rule of court, the parties to said cases are privileged to file briefs, a single brief, rather than two, may be filed, wherein all matters involved in all of said cases may be discussed and argued;

4. That the said two cases may be heard by the United States Circuit Court of Appeals for the Ninth Circuit upon one oral argument before said Court.

Dated: San Francisco, California, February 1st, 1933.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner.
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondents.

It is hereby ordered, that pursuant to the above stipulation, the two above-named cases be and they are hereby consolidated in accordance with the terms of said stipulation.

Dated: San Francisco, California, March 10, 1933.

CURTIS D. WILBUR,
United States Circuit Judge.

[Endorsed]: United States Board of Tax Appeals. Filed Mar. 14, 1933.

[Endorsed]: Filed Apr. 26, 1933. Paul P. O'Brien, Clerk.

United States Board of Tax Appeals
Washington

United States of America
District of Columbia—ss.

I, B. D. Gamble, clerk of the United States Board of Tax Appeals, hereby certify the foregoing and attached to be true and correct copies of the Stipulation and Order for Consolidation on Appeal in Docket Numbers 41758, 41759, wherein Zellerbach Paper Company and National Paper Products Company, are Petitioners and the Commissioner of Internal Revenue is Respondent.

In testimony whereof I hereunto subscribe my name and affix the seal of said Board of Tax Appeals at the city of Washington in said District this 11th day of April, 1933.

[Seal] B. D. GAMBLE
Clerk, United States Board of
Tax Appeals.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-fourth day of July, in the year of our Lord One Thousand Nine Hundred and thirty-three.

Present: Honorable WILLIAM H. SAWTELLE, Circuit Judge, Presiding, Honorable FRANK H. NORCROSS, District Judge.

No.....

In the Matter of the Substitution of Guy T. Helvering, as Commissioner of Internal Revenue in the Place of David Burnet.

Upon consideration of the motion of petitioner or petitioners, consented to by respondent or respondents, in each of the following causes, It Is Ordered that Guy T. Helvering, as Commissioner of Internal Revenue be, and he hereby is substituted for David Burnet, former Commissioner of Internal Revenue in each of the following cases, and that each of the following causes be so continued and maintained:

National Paper Products Company vs. Commissioner of I. R. No. 7140.

Same vs. Same. No. 7211.

Zellerbach Paper Company vs. Commissioner of I. R. No. 7141.

Same vs. Same. No. 7209.

Same vs. Same. No. 7210.

At a stated Term, to wit, the October Term, A. D. 1933 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday, the fourteenth day of December in the year of our Lord One Thousand Nine Hundred and thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable FRANCIS A. GARRECHT, Circuit Judge.

ORDER OF SUBMISSION

ORDERED petition to review in each of above causes argued by Mr. John Francis Neylan, counsel for petitioners, and by Mr. Francis H. Horan, Special Assistant to the Attorney General, counsel for respondent, and submitted to the court for consideration and decision.

At a stated Term, to wit, the October Term, A. D. 1933 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday the twenty-eighth day of February in the year of our Lord One Thousand Nine Hundred and thirty-four.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable FRANCIS A. GARRECHT, Circuit Judge.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENTS.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this court in above causes be forthwith filed by the clerk and that a judgment be filed in each cause and entered in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Before: WILBUR, SAWTELLE and GARRECHT, Circuit Judges.

WILBUR, Circuit Judge:

Petitioners seek a review of an order of the Board of Tax Appeals affirming a deficiency assessment for income taxes. The sole question presented by the record is whether or not the assessment was too late.

On July 15, 1925, the petitioner made a return for its fiscal year ending April 30, 1925, filing a consolidated income tax return on behalf of itself and its subsidiaries, the National Paper Products Company and the Sanitary Products Corporation. The question is whether or not this return started the period of limitation for making an assessment under the Revenue Act of 1926. It is alleged and is conceded "that said return was filed in strict compliance with the Revenue Act of 1924 then in force and effect and that said return was neither false nor fraudulent". This return showed a net income of $1,266,992.39 and a tax thereon computed by the taxpayer at the rate of 12½ per cent as provided in the statutes of 1924 (§ 230 Rev. Act 1924, 43 Stat. 253, 282), amounting to $158,374.05. This tax was paid in four installments of $39,593.51, the first on July 15, 1925, and the last on April 16, 1926. On February 26, 1926, the Revenue Act of 1926 was passed, by the terms of which the tax on the net

income of corporations was increased for the calendar year 1925 to 13 per cent of the amount of the net income (44 Stat. 9, 39, § 230 (a)), an increase of ½ of one per cent. On February 28, 1926, the Commissioner of Internal Revenue issued his decision No. 3843 requiring the filing of a new return by a corporation which had filed a return for the fiscal year ending in 1925 where such corporation was required to pay an additional tax by the Revenue Act of 1926. We quote the rule as follows:

> "To Collectors of Internal Revenue and others concerned:
>
> Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15, 1926. Payment of the additional tax may be made at the time the return is filed or, if installment payments are desired such installments must be paid at the time they would be due, if based upon a return for the fiscal year ended February 28, 1926."

The petitioner came within the scope of this decision. After the promulgation of the Treasury Decision No. 3843 as above set forth, a copy of same was mailed to the petitioner by the Collector of Internal Revenue at San Francisco, California, requesting that the filing of an amended income tax

return as provided for therein, be given immediate attention. In pursuance of this decision and request, on May 14, 1926, the taxpayer filed a new return with the Collector of Internal Revenue at San Francisco. It insists, however, that this return is a mere amendment of the previous return, or supplement thereto, and is not "the return" within the meaning of the Revenue Act of 1926 relating to limitation of the period of assessment (§ 277 (a) (1) Rev. Act. 1926). The blank furnished by the Department of Internal Revenue for the purpose of this return is in the usual form of corporate return for the fiscal year 1925 and in making the return the petitioner left blank all the spaces showing the amounts and sources of gross income and the deductions therefrom authorized by the Revenue Act of 1926, and in lieu of such information stated the net income for the year ending 1925 to be $1,266,992.39 in conformity with the return theretofore filed on July 25th under the Revenue Act of 1924. The taxpayer, in computing the tax in the return of May 14, 1926 in conformity with this form of return, estimated the tax for the period from April 30, 1924 to January 1, 1925, eight months, at 12½ per cent to be $105,582.70, and for the four months beginning January 1, 1925 and ending April 30, 1925, estimated at 13 per cent, as $54,903. The tax for the taxable year of petitioner thus estimated by the taxpayer was $160,485.70, which was $2,112.65 more than the taxpayer had already paid upon his estimate of the tax under his return of July 15, 1925. A check

for this latter amount accompanied the return. The deficiency letter of October 10, 1928 showed a total tax of $188,744.65 on the consolidated return instead of $160,485.70 as estimated and paid by the taxpayer. This increased tax was based on a determination that the net income for the taxable year was $1,490,089.30 instead of $1,266,992.39 as fixed by the taxpayer. In the return of May 14, 1926 the tax was computed by the taxpayer on the net income of $1,266,992.39 for 8/12th of the period at the 1924 rate of 12½ per cent, and at the 1925 rate of 13 per cent for 4/12th of the period on the same net income, that is, from January 1st to April 30th. It is also admitted that the net income and the tax thereon was properly determined by the Commissioner in his deficiency letter. It will be observed in this connection that the difference in the amount of tax imposed by the Revenue Acts of 1924 and 1926, one-half of one per cent for one-third of a year (one-sixth of one per cent) is a comparatively small portion of the deficiency tax determined by the Commissioner in the deficiency letter.

It is claimed that the assessment and collection of the tax is barred by the Revenue Act of 1926 which fixed the limitation for the assessment of taxes (44 Stat. 9, 58, §277), as follows:

> "Sec. 277 (a) Except as provided in section 278—
>
> (1) The amount of income taxes imposed by this act shall be assessed within three years after the return was filed, and no proceeding

in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) The amount of the income, excess-profits, and war-profits taxes imposed by the Revenue Act of 1921, and by such act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by the Revenue Act of 1924, shall be assessed within four years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period."

It will be observed that the deficiency letter was within four years after return filed by the taxpayer July 15, 1925 and was within three years of the return filed by the taxpayer May 14, 1926. The contention of the petitioner is that the tax imposed for its fiscal year 1925 was necessarily imposed under the Revenue Act of 1926 and that therefore the three year period specified in sub. (1) of §277 (a) of the Revenue Act of 1926 applies rather than sub. (2) of the same section, requiring assessment within four years and that the return filed July 15, 1925 started the three year period running. The petitioner states its position in its brief as follows:

"The 1924 act was repealed by §1200 (a) of the 1926 act as of January 1, 1925, with certain unimportant exceptions as noted; the 1918 act

was repealed by §1400 (a) of the 1921 act as of January 1, 1921, with certain unimportant exceptions as noted. As a result of the repeal of the 1924 act by the 1926 act as of January 1, 1925, any further impositions or attempted impositions of taxes for the calendar year 1925, or any fiscal year ending in 1925, are necessarily made under the terms of the 1926 act.

And likewise, the Commissioner is necessarily limited under the provisions of the 1926 act, to a period of three years after the filing of a return within which to make an additional assessment (or to send out a deficiency letter)."

We agree that the tax here involved was imposed under the Revenue Act of 1926, for reasons which will be now stated.

Section 230, "Title II Income Tax" of the Revenue Act of 1924 (43 Stat. 253) which fixes the rate of corporate income taxes, above referred to, is expressly repealed by the Revenue Act of 1926 (§1200). Where the taxable year ended in 1925 the Revenue Act of 1926 provided for the imposition of the tax as follows:

"Sec. 207 (a). If the taxpayer makes return for a period beginning in one calendar year hereinafter in this subdivision called 'first calendar year') and ending in the second following calendar year (hereinafter in this subdivision called 'second calendar year') and the law applicable to the second calendar year is dif-

ferent from the law applicable to the first calendar year, then his tax *under this title* for the period ending during the second calendar year shall be the sum of: (1) the same proportion of a tax for the entire period, determined under the law applicable to the first calendar year and at the rates for such year, which the portion of such period falling within the first calendar year is of the entire period; and (2) the same proportion of a tax for the entire period, determined under the law applicable to the second calendar year and at the rates for such year, which the portion of such period falling within the second calendar year is of the entire period." (Italics ours.)

It will be observed that the law expressly states that the taxpayer making the return for a taxable year ending in 1925 shall have his tax fixed "under this title". The result of this provision of the Revenue Act of 1926 (§207 (a)) is that if there has been a change in the method of ascertainment of the net income the tax thereon would be increased or decreased. It follows that if either the gross income is increased by the new method of computation fixed by the Revenue Act of 1926 or the permissible deductions therefrom to ascertain the net income are decreased, in either event the net income or taxable base is increased for the four months beginning January 1, 1925 and ending April 30, 1925. There were changes in the Revenue Act of 1926 affecting both the gross income and the deductions therefrom,

but before pointing out some of these changes it should be stated that it seems to be conceded that these changes did not in fact affect this particular taxpayer and that the only change applicable to it was the increased rate of taxation of one-half of one per cent, but we are concerned not with the effect on the particular taxpayer, but with the question of whether or not the Commissioner of Internal Revenue was authorized by rule to require the filing of new returns under the act of 1926 and whether a return made in compliance with that rule is "the return" referred to in the Revenue Act of 1926 (207 (a)) which limits the period for assessing the tax to three years from the date of the return. It is sufficient for our purpose to point out some of the changes in the Revenue Act of 1926 from the provisions of the Revenue Act of 1924 which affect either the method of estimating the gross income or the allowable deductions therefrom. We find that by the Revenue Act of 1926 (§202 (b)) the method of determining the profit from the sale of the property which had been acquired by the taxpayer prior to March 1, 1913 is changed from the method provided in the Revenue Act of 1924. While the change is obvious from an inspection of the statute a convenient way to state the effect of the change is by quotation from the report of the Senate Committee on Finance in submitting the revenue bill of 1926 to the Senate. Senate Rep. No. 52, 69th Congress, first session, contained in Senate Rep. 2-484 for that session:

"Section 202 (b): When property was acquired prior to March 1, 1913, the present law provides that in the case of a sale of such property the basis for determining gain or loss shall be cost or March 1, 1913, value, whichever is higher; and also provides that in making adjustments for depreciation, etc., proper adjustment shall be made for depreciation, etc., 'previously allowed'. Owing to the fact that there was no income tax prior to March 1, 1913, in cases where property was acquired prior to that date no depreciation has been 'allowed', and the taxpayer may receive too large a basis for determining gain or loss. The amendment proposed provides that the deductions for depreciation, etc., to be made in such cases shall be such deductions as were actually sustained with respect to such property, which would include such depreciation as had occurred prior to that date.

"Under existing law in the case of determining gain from the sale or other disposition of property, the cost or March 1, 1913, value of such property is required to be reduced by the amount of depreciation or depletion allowed under prior income tax laws. It has been claimed that the effect of this provision is to allow a taxpayer to elect to take no depreciation or depletion against his annual income and to permit him to write off the entire cost or March 1 value at time of sale. The bill as passed by the House provides that the cost or March 1, 1913,

value in the case of sale shall be reduced by the amount of depreciation or depletion allowable under prior income tax acts in computing the gain subject to tax. It is believed that the rule stated by the House bill is the correct rule and that all taxpayers should be required to take proper annual deductions for depreciation and depletion.

"Section 202 (b) (2) as written by the House provides that in no case shall the amount of the reduction of the basis by reason of depletion exceed a depletion deduction computed without reference to discovery value. Inasmuch as the depletion in the case of oil and gas wells, as recommended by the committee by its amendment to section 204 (c) of the bill, is to be based on a percentage of gross income instead of on discovery value, the committee recommends that section 202 (b) of the bill be amended by inserting a provision that in no case shall the amount of the diminution for depletion exceed a depletion deduction computed without reference to an allowance based on a percentage of gross income."

(See to the same effect report of the House Comm. on Ways and Means, p. 5, House Rep. on Public Bills 1-362, 69th Congress, first session).

This change in the statute might make very great changes in the taxable net income of the taxpayer. For instance, the amount claimed by the petitioner in his return for depreciation resulting from ex-

haustion, wear and tear and obsolescence was $558,-348.94. The gross profits returned were $5,256,-205.82. The total deductions were $3,597,100.32. The decision of the Supreme Court in Murphy Oil Co. v. Burnet, 287 U. S. 299, and our own decision therein, 55 F. (2d) 17, indicates the difficulties in estimating the proper amount of deductions for depletion and exhaustion in the case of oil properties and the importance thereof in estimating the tax. It also appears from this report of the Senate Committee on Finance that the reason for imposing the additional tax of one-half of one per cent upon the corporation income was because of the fact that the Revenue Act of 1926 repealed the capital stock tax. Another change from the Revenue Act of 1924 is in regard to the discovery value of oil property. We refer to the report of the House Committee on Ways and Means above referred to at page 6 for a discussion of the reason, purpose and effect of the change without quoting the same, as it is sufficient for our purposes to call attention to the fact that the Revenue Act of 1926 provides for a different method of estimating discovery depletion in the case of a corporation owning and selling oil property from that provided in the Revenue Act of 1924.

These changes in the method of estimating the net income of the taxpayer for the period beginning January 1, 1925, and the method of estimating the taxpayer's income under the Revenue Act of 1924 for the period beginning April 30, 1924 and ending January 1, 1925, show the necessity of requiring the

taxpayer to make the new return under the Revenue Act of 1926 as a basis for fixing the tax. It is true that in the case at bar it is agreed in effect that the changes we have referred to, and such others as may have been made in the method of estimating the gross income or the deductions therefrom, did not affect the taxable net income of the petitioner for the four-month period in the calendar year 1925, but this fact could only be ascertained definitely by a return showing that neither the gross income shown by the original return nor the net income thereby shown was affected by these changes in the statute, or by an independent examination of the affairs of the taxpayer for that purpose.

We conclude that the tax of the petitioner for the taxable year ending April 30, 1925 was imposed under the Revenue Act of 1926 and, consequently, that the assessment of the tax must be made within three years after "the return" was filed (Rev. Act 1926, §207 (a), §230, §286, supra). The question then resolves itself into this, was the return of July 15, 1925 or the return of May 14, 1926 "the return" which started the three year period of limitation running. The question is, what did Congress intend by the words "the return" used in §277 (a), sub. (1), Revenue Act of 1926, as the basis for starting the statute of limitations running against the Commissioner and the Government. That question will now be considered:

Section 227 of the Act of 1926, which relates back to January 1, 1925, provides for the filing of returns on the 15th day of the third month following the

close of the fiscal year. Consequently it is urged that the return filed July 15, 1925 was a return under the Revenue Act of 1926 retroactively in effect on that date. However, §239 of that Act provides that "every corporation subject to taxation *under* this title shall make a return stating specific items of its gross income and the deduction and credits allowed *by this title*", etc. (Italics ours) Can it be said that a return made before the Act of 1926 was passed requiring a return to be made in compliance with the Revenue Act of 1926 is "the return" contemplated by the Revenue Act of 1926 even if we assume that for certain purposes a return theretofore made could be utilized as a basis for assessing the taxes under the 1926 Act? It is clear that "the return" filed by the taxpayer before the Revenue Act of 1926 was passed could not be considered an effort on his part to comply with the not yet enacted law of 1926. It was a return under and for the purpose of taxation in accordance with the law of 1924. This return provided the data (net income) for the taxation of the income for the eight months included in the calendar year 1924. Eigth-twelfths of the tax thereon computed would be the amount taxable under the Revenue act of 1926 for the period ending January 1, 1925. The return does not purport to show either the net income or the tax under the Act of 1926 for the four months included in the calendar year 1925. Unless the return filed July 15, 1925 can be considered a return under the Revenue Act of 1926, enacted more than six months later, but retroactively effective six months earlier, the statute

of limitations has not run. It is difficult to see how the action of the taxpayer before the Act requiring the action can be deemed a compliance with the statute or an act done under the statute not yet passed or applicable, notwithstanding its retroactive provisions.

The contention of the petitioner is in effect that inasmuch as a return was in fact made under the law then in force requiring such return (Rev. Act 1924) and inasmuch as such return contains all the data necessary for the Commissioner to make the assessment, under the Act of 1926 retroactively then in force, there was no necessity or occasion for a new return, and that the statute of 1926 requiring a return must be construed as retroactively applying to "the return" already filed. Consequently, it is argued that Congress having by its retroactive legislation recognized the return theretofore made during the calendar year 1925 as a return, the action of the Commissioner in adopting a rule requiring a new return is in conflict with the intent of Congress and therefore void, or, to the same effect, that the new return is not the return required by the law. These contentions are based upon the assumption that the Commissioner had only to add to the tax an additional tax of one-sixth of one per cent on the net income shown by the return; consequently, that he could very well make the assessment without further data. One difficulty with this contention is that it ignores the history and the practice of the department acquiesced in by Congress from the first

by which the taxpayer has been required not only to make return of the amount of his income and claim his deductions and credits under the applicable Revenue Act but also to estimate the amount of the tax due from the taxpayer. One of the purposes of the return as developed historically is the estimate of the tax to be paid by the taxpayer. Congress has repeatedly recognized such an estimate of the tax by the taxpayer as a proper basis for payment and has provided an elaborate system for fixing the amount of the deficiency therein. For instance, the Revenue Act of 1918, §250 (a), providing for the payment of the income tax in installments shows that the Act contemplates that the tax shall be computed by the taxpayer. The statute says:

> "§250 (b): As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return the installments shall be recomputed, * * * In such case if the return is made in good faith *and the understatement of the amount in the return* is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the amount of the deficiency," etc. (Italics ours)

See also §250 (a) (b) of the Act of 1921. The Revenue Act of 1924, §273-1 defines a deficiency, among

other things, as "the amount by which the tax imposed by this title *exceeds the amount shown as the tax by the taxpayer* upon his return". That act also provides that, "Where *the amount determined by the taxpayer* as proposed by this title * * * *is not paid* at the time prescribed for its payment, there is to be collected * * *", etc. (Italics ours). This same provision was incorporated in the Revenue Act of 1926 (276 (a) (1)).

In view of this established practice it would seem entirely reasonable that the Commissioner should require a new return under a newly enacted law where as result of that law there was an increased tax due from the taxpayer, and it is quite immaterial to this consideration whether or not the change involved is great or small because payment of the additional tax is and and must be based upon a new return by the taxpayer. The Commissioner cannot determine the deficiency due to the changes made by the new law until he is ready to determine the proper assessment. That determination not only involves careful analysis of the return filed by the taxpayer, but in the case such as that at bar involving a gross income of over $5,000,000 and claimed deductions of over $3,000,000 would require very careful consideration of the books and business of the corporation. That this process is one that requires much time is recognized by every act of Congress which, although it requires the Commissioner to promptly determine the tax, gives him several years in which to make the determination. Hence,

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 2
(Continued)

(b) Charges to reserve for auto insurance included in adjustment on return restoring increase to reserve of $2,075.71 constitutes a double deduction.		
Proof—Reserve 4/30 - 1924		$18,401.92
4/30 - 1923		16,326.21
Net increase		$ 2,075.71
(c) Depreciation corrected:		
Machinery, etc. 4/30/23	$379,229.77 at 8%	$30,338.39
Additions, 1924	37,870.84 at 4%	1,514.83
Buildings (10 year lease)	34,961.32 at 10%	3,496.13
Automobiles claimed on books (No Change)		32,062.50
Total allowed		$67,411.85

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 2
(Continued)

Claimed on return		$72,686.44
Add: Error on return:		
Depreciation on books	$ 70,420.89	
Less - Restored on return	28,266.48	42,154.41
Total on return		$114,840.85
Allowed as above		67,411.85
Disallowed net		$ 47,429.00

(d) Oregon State income tax is allowable deduction.

(e) Appreciation of Assets is not taxable income. [57]

vs. Guy T. Helvering

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 3

Net Income

National Paper Products Company.

Net Income as disclosed by return		$643,755.67
As corrected		759,215.79
Net adjustment		$115,460.12
Unallowable deductions and additional income:		
(a) Bad accounts	$23,519.40	
(b) Depreciation	91,940.72	
Net adjustment as above		$115,460.12

SCHEDULE 4

Explanation of Items Changed

(a) Bad accounts claimed on return over book deduction	$ 23,519.40
Decrease reserve for losses claimed	30.32
Total	$ 23,549.72

Schedule 4
(Continued)

Reserve April 30, 1923	$25,453.69	
April 30, 1924	25,423.37	
Decrease		30.32
Excess deduction (Double deduction)		$ 23,519.40
(b) Depreciation Corrected:		
Machinery and Equipment:		
San Francisco - 4/30/23	$ 193,653.36 at 8%	$ 15,492.27
Additions 1924	(14,242.54) at 4%	(569.70)
Stockton, Los Angeles & H.Q. 4/30/23	1,329,940.28 at 8%	106,395.22
Additions 1924	713,232.07 at 4%	28,529.28
Carthage - 4/30/23	703,350.46 at 8%	56,268.04
Additions 1924	65,059.38 at 4%	2,602.37
Buildings Stockton 4/30/23	1,050,699.98 at 2½%	26,267.50
Additions 1924	126,031.53 at 1¼%	1,575.39
Buildings Carthage - 4/20/23	346,863.90 at 2½%	8,671.60
Additions 1924	5,312.30 at 1¼%	66.40
Automobiles claimed (No Change)		5,233.54
Total Allowable		$250,531.91

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 4
(Continued)

(b) Continued.		
Claimed on return		$310,027.47
Add - Error on return:		
Depreciation on books	$269,280.99	
Less - Restored on return	236,835.83	32,445.16
Total on return		$342,472.63
Allowed as above		250,531.91
Disallowed net		$ 91,940.72

The Sanitary Products Corporation.

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 5
Net Income

Net loss as disclosed by return		$ 11,344.52
As corrected - net loss		8,704.94
Net adjustment		$ 2,639.58
Unallowable deductions and additional income:		
(a) Reserve for losses	$ 2,396.44	
(b) Depreciation	243.14	
Net adjustment as above		$ 2,639.58

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 6

Explanation of Items Changed

(a)	Increase in reserve for losses increases income accordingly:	
	Reserve - 4/30/1924	$ 5,127.20
	4/30/1923	2,730.76
	Net increase	$ 2,396.44
		[59]
(b)	Depreciation claimed on machinery	$ 1,215.69
	Corrected: Average assets, $12,156.92 at 8%	972.55
	Net disallowed	$ 243.14
	Automobiles allowed as claimed.	

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 7

Consolidated net income 1924

Net income as corrected:		
Zellerbach Paper Company (Schedule 1)	$550,939.61	
National Paper Products Company (Schedule 3)	759,215.79	
Total		$1,310,155.40
Net Losses As Corrected:		
The Sanitary Products Corporation, (Schedule 5)		8,704.94
Consolidated net income corrected		$1,301,450.46

SCHEDULE 8

Computation of Tax - 1924

Income Tax

Net income for taxable year (Schedule 7)	$1,301,450.46
Income tax at 12½%	$ 162,681.31

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 9

Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 550,939.61	$ 68,409.88
National Paper Products Company	759,215.79	94,271.43
Total	$1,310,155.40	$162,681.31

SCHEDULE 10

Allocation of Original Tax, assessed

Account #400008, Oct. 1924

Name of Company	Income	Amount
Zellerbach Paper Company	$ 432,957.61	$ 53,549.48
National Paper Products Company	643,755.67	79,621.61
Total	$1,076,713.28	$133,171.09

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 11

Computation of Tax - 1924

National Paper Products Company	
Total tax liability - Allocated, Schedule 9	$ 94,271.43
Previously assessed - Allocated, Schedule 10	79,621.61
Additional tax	$ 14,649.82

SCHEDULE 12

Computation of Tax - 1924

Total tax liability - Allocated, Schedule 9	$ 68,409.88
Previously assessed - Allocated, Schedule 10	53,549.48
Additional tax	$ 14,860.40

[61]

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 13

Net Income

Net income as disclosed by return		$490,802.78
As corrected		548,738.32
Net adjustment		$ 57,935.54
Unallowable deductions and additional income:		
(a) Bad Accounts	$57,884.22	
(b) Auto Insurance Reserve	3,925.57	
(c) Depreciation	13,945.21	
Total		$ 75,755.00
Nontaxable income and additional deductions:		
(d) State Income Taxes	$ 2,083.86	
(e) Refund on purchases	10,354.93	
(f) Appreciation	5,380.67	
Total		$ 17,819.46
Net adjustment as above		$ 57,935.54

Zellerbach Paper Company. Year ended April 30, 1925

SCHEDULE 14
Explanation of Items Changed

(a) Bad Accounts claimed on return over book deduction		$ 57,884.22
Increase in reserve for losses		56.44
Net claimed		$ 57,827.78
Reserve - 4/30/1925	$69,182.21	
4/30/1924	69,125.77	
Increase		$ 56.44
Excess deduction (Double deduction)		$ 57,884.22
		[62]
(b) Increase in reserve for auto insurance increases income accordingly:		
Reserve 4/30/1925	$22,327.49	
4/30/1924	18,401.92	
Increase		$ 3,925.57

Zellerbach Paper Company. Year ended April 30, 1925.

Schedule 14
(Continued)

(c) Depreciation claimed on return (Machinery)	39,395.49
Taken on books and allowed	25,450.28
Excess	$13,945.21

(d) See explanation Schedule 2 (d).

(e) Income is decreased on account of error in entry of refund from American Investment and Realty Company on account of price of Olympic Paper and Power Company Stock adjusted in 1926, reversed herein and allowed 1925.

(f) See explanation Schedule 2 (e).

Zellerbach Paper Company.

Year ended April 30, 1925

SCHEDULE 15

Net Income

National Paper Products Company.

Net income as disclosed by return		$787,864.49
As corrected		947,909.38
Net adjustment		$160,044.89
Unallowable deductions and additional income:		
(a) Bad Accounts	$ 6,768.17	
(b) Reserve for losses	4,133.16	
(c) Depreciation	129,809.36	
(d) Depletion	19,334.20	
Net adjustment as above		$160,044.89

[63]

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 16

Explanation of Items Changed

(a)	Bad accounts claimed on return over book deduction		$ 6,768.17
	Increase in reserve for losses claimed (Not allowable)		4,133.16
			$ 10,901.33
	Reserve 4/30/1925	$29,556.53	
	4/30/1924	25,423.37	
	Increase		4,133.16
	Excess (double deduction)		$ 6,768.17
(b)	See analysis of reserve above; increase in reserve, increases income accordingly.		
(c)	Depreciation for 1925 reduced in 1926 and reversed herein by restoring to income in 1925 and allowing in 1926.		

Zellerbach Paper Company. Year ended April 30, 1925

Schedule 16
(Continued)

(d) Depletion claimed	$34,492.50
Corrected	
3,679.20 cords at $4.12 in accordance with Engineers report for prior years	15,158.30
Net disallowed	$19,334.20

SCHEDULE 17
Net Income

The Sanitary Products Corporation.		
Net loss as disclosed by return		$ 11,674.88
As corrected - net loss		6,558.40
Net adjustment		$ 5,116.48
Unallowable deductions and additional income:		
(a) Reserve for losses	$ 2,848.62	
(b) Depreciation	2,267.86	
Net adjustment as above		$ 5,116.48

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 18

Explanation of Items Changed

(a) Increase in reserve for losses, increases income accordingly:		
Reserve April 30, 1925	$ 7,975.82	
April 30, 1924	5,127.20	
Increase		$ 2,848.62
(b) Depreciation claimed, not on books, disallowed, excess claimed		$ 2,267.86

SCHEDULE 19

Consolidated Net Income - 1925

Net Income as Corrected:		
Zellerbach Paper Company, (Schedule 13)	$548,738.32	
National Paper Products Co. (Schedule 15)	947,909.38	
Total		$1,496,647.70
Net Losses As Corrected:		
The Sanitary Products Corporation (Schedule 17)		6,558.40
Consolidated net income corrected		$1,490,089.30

SCHEDULE 20
Computation of Tax - 1925
Income Tax

Net income for taxable year (Schedule 19)	$1,490,089.30
Income tax at 12½% - 1924 rates (8/12)	124,174.11
Income tax at 13% - 1925 Rates (4/12)	64,570.54
Total tax assessable	$188,744.65

[65]

SCHEDULE 21
Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 548,738.32	$ 69,202.27
National Paper Products Company	947,909.38	119,542.38
Total	$1,496,647.70	$188,744.65

Zellerbach Paper Company. Year ended April 30, 1925.

SCHEDULE 22

Allocation of Tax Assessed

Account #400,011, July 1925 158,374.05
Account #400,568, May 1926 2,111.65

Name of Company	Income	Amount
Zellerbach Paper Company	$ 490,802.78	$ 61,600.72
National Paper Products Company	787,864.49	98,884.98
Total	$1,278,667.27	$160,485.70

SCHEDULE 23

Computation of Tax - 1925

National Paper Products Company	
Total tax liability - allocated, Schedule 21	$119,542.38
Previously assessed - allocated, Schedule 22	98,884.98
Additional Tax	$ 20,657.40

[66]

Zellerbach Paper Company. Year Ended April 30, 1925.

SCHEDULE 24
Computation of Tax - 1925

Total tax liability - Allocated, Schedule 21	$ 69,202.27
Previously assessed - Allocated, Schedule 22	61,600.72
Additional tax	$ 7,601.55

Year Ended April 30, 1926.

SCHEDULE 25
Net Income

Net income as disclosed by return	$833,563.82
As corrected	813,987.33
Net adjustment	$ 19,576.49
Unallowable deductions and additional income:	
(a) Reserve for auto insurance	$ 1,550.86

Zellerbach Paper Company. Year ended April 30, 1926.

Schedule 25
(Continued)

Nontaxable income and additional deductions:		
(b) Reserve for losses	$ 365.81	
(c) Depreciation adjustment	13,731.80	
(d) M. M. Cohen, Trustee	7,029.74	
Total		21,127.35
Net adjustment as above		19,576.49

SCHEDULE 26
Explanation of Items Changed

(a) Auto insurance claimed on return		$ 12,500.00
Reserve April 30, 1925	$22,327.49	
April 30, 1926	11,378.35	
Decrease allowable		10,949.14
Excess deducted		$ 1,550.86

Schedule 26
(Continued)

(b) Reserve for losses restored on return		$ 2,170.75
Reserve 4/30/1926	$70,987.15	
4/30/1925	69,182.21	
Net increase corrected		1,804.94
Excess restored		$ 365.81

(c) Depreciation for 1925 reduced in 1926 and reversed herein by allowing in 1926.

(d) Book income is decreased by income included in account of M. M. Cohen, Trustee, which was restored to income of prior years.

1920	$ 4,971.75	
1921	2,057.99	
Total		$ 7,029.74

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 27

National Paper Products Company.

Net Income

Net income as disclosed by return		$1,407,048.93
As corrected		1,313,597.30
Net adjustment		$ 93,451.63
Unallowable deductions and additional income:		
(a) Adjusting error	.02	
(b) Goodwill	$36,357.71	
Total		$ 36,357.73
Nontaxable income and additional deductions:		
(c) Depreciation		129,809.36
Net adjustment as above		$ 93,451.63

SCHEDULE 28

Explanation of Items Changed

(a)	Decrease in reserve for losses claimed		$ 598.59
	Reserve - 4/30/1925	$29,556.53	
	4/30/1926	28,957.96	
	Net decrease		598.57
	Excess deducted		$ .02
(b)	Renshaw, Jones and Sutton Company stock purchased April 30, 1927, cost		$349,888.00
	Assets and liabilities taken over at book value and stock canceled, net worth (May 31, 1925)		313,530.29
	Loss claimed		$ 36,357.71
	Disallowed as no deductible loss has been sustained, as you purchased and received value for the amount in good will.		
(c)	Contra adjustment (Schedule 16 (c).		

Zellerbach Paper Company. Year ended April 30, 1926

SCHEDULE 29
Net Income

The Sanitary Products Company.

Net loss as disclosed by return				$ 7,964.25
As corrected - net loss				9,157.75
Net adjustment				$ 1,193.50
Nontaxable income and additional deductions:				
(a) Reserve for losses decreased, decreases income accordingly.				
Reserve 4/30/1925		$ 7,975.82		
4/30/1926		5,316.31		
Decrease			$2,659.51	
Claimed on return	$2,659.51			
	1,193.50		1,466.01	
Net adjustment as above				

[69]

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 30
Consolidated Net Income 1926.

Net Income As Corrected:		
Zellerbach Paper Company (Schedule 25)	$ 813,987.33	
National Paper Products Co., (Schedule 27)	1,313,597.30	
Total		$2,127,584.63
Net Losses As Corrected:		
The Sanitary Products Company, (Schedule 29)		9,157.75
Consolidated net income corrected		$2,118,426.88

Zellerbach Paper Company. Year ended April 30, 1926

SCHEDULE 31

Computation of Tax - 1926

Income Tax

Net income for taxable year (Schedule 30)	$2,118,426.88
Income tax at 13% - 1925 Rates (8/12)	$ 183,596.99
Income tax at 13½% - 1926 Rates (4/12)	95,329.21
Total tax assessable	$ 278,926.20

SCHEDULE 32

Allocation of Total Tax

Name of Company	Income	Amount
Zellerbach Paper Company	$ 813,987.33	$106,713.68
National Paper Products Company	$1,313,597.30	172,212.52
Total	$2,127,584.63	$278,926.20

Zellerbach Paper Company. Year ended April 30, 1926.

SCHEDULE 33
Allocation of Tax Assessed
Consolidated

Return Zellerbach Corporation,
Account #400011, July 1926

Name of Company - Group #2	Percent	Amount
Zellerbach Paper Company	$ 833,563.82	$109,041.74
National Paper Products Company	1,407,048.93	184,061.56
Group #1		
American Investment & Realty Company	102,401.82	
Washington Pulp & Paper Corporation	399,095.76	
Northwestern Power and Light Company	8,287.85	
Zellerbach Corporation	Loss	
Total - Group #1	$ 509,785.43	$ 66,687.02
Grand Total	$2,750,398.18	$359,790.32

Zellerbach Paper Company. Year ended April 30, 1926

SCHEDULE 34

Computation of Tax - 1926

National Paper Products Company	
Total Tax Liability - Allocated, Schedule 32	$172,212.52
Previously assessed - Allocated, Schedule 33	184,061.56
Overassessment	$ 11,849.04

SCHEDULE 35

Computation of Tax - 1926

Zellerbach Paper Company.	
Total Tax Liability - Allocated, Schedule 32	$106,713.68
Previously assessed - Allocated, Schedule 33	109,041.74
Overassessment	$ 2,328.06

PETITIONER'S EXHIBIT 5.

TREASURY DEPARTMENT

Washington

(462M) Oct. 10, 1928.

Office of
Commissioner of Internal Revenue
Address reply to
Commissioner of Internal Revenue
and Refer to
National Paper Products Company,
1789 Montgomery Street,
San Francisco, California

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of $35,307.22 for the years 1924 and 1925 and an overassessment of $11,849.04 for the years 1926 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:p-7.

Respectfully,

D. H. BLAIR, Commissioner.

By C. B. ALLEN, Deputy Commissioner.

Enclosures

Statement Form 866 Form 882 Form 7929

[Endorsed]: U. S. Board of Tax Appeals. Div. 9. Docket 41758 & 41759. Admitted in Evidence June 10, 1931. Petitioner's Exhibit 5. [72]

IT:AR:D:60D
CAM

STATEMENT OF RETURNS EXAMINED
AND
RESULTING TAX LIABILITY

Company	Fiscal Years	Deficiency in Tax	Over-assessment
National Paper Products Company, San Francisco, California.	1924	$14,649.82	
	1925	20,657.40	
	1926		$11,849.04

The adjustments producing the above-stated results are the same as shown in Bureau letter dated August 31, 1928 and are shown in Schedule attached to a letter addressed to Zellerbach Paper Company, San Francisco, California.

A certificate of overassessment will be issued for the amount shown above through the office of the Collector of Internal Revenue for your district, and will be applied by that official in accordance with the provisions of section 284 (a) of the Revenue Act of 1926. [73]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE

The above-entitled cause came on for hearing before The Honorable E. H. Van Fossan, Member of the United States Board of Tax Appeals on the 10th day of June, 1931, at Oakland, California, there being present the Petitioner, by its Counsel, Messrs. John Francis Neylan, and J. Paul Miller, and the Respondent, by its Counsel, Messrs. H. A. Cox and F. R. Shearer (C. M. Charest, Esq., General Counsel.)

Thereupon the following proceedings were had and testimony heard by said Member pertaining to the issues involved in the Petition for Review filed with the United States Board of Tax Appeals on December 6, 1928.

Prior to the introduction of testimony, Counsel for Petitioner moved for the consolidation of the

above-entitled cause with one additional case, to-wit, National Paper [74] Products Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, United States Board of Tax Appeals Docket No. 41758, which motion was granted.

Thereupon Counsel for Petitioner moved for leave to file an Amended Petition, the purpose of which was to limit the question involved to the Statute of Limitations; there being no objection on the part of Counsel for the Respondent, said motion was granted, and the amended Petitions in each of the cases referred to herein were filed. Said amended Petitions are a part of the record herein.

Thereupon Counsel for the Respondent dictated an informal Answer to said amended Petitions, and thereafter a written Answer to said amended Petitions was filed, which Answer is a part of the record herein.

Thereupon Counsel for Petitioner offered in evidence a Consolidated Income Tax Return, on Form 1120-A, furnished by the Treasury Department of the United States, filed by Zellerbach Paper Company on behalf of itself and its subsidiaries, National Paper Products Company and Sanitary Products Corporation for the fiscal year May 1st, 1924, to and including April 30th, 1925; said return was received in evidence and marked "Petitioner's Exhibit No. 1."

Counsel for Petitioner then offered in evidence an additional document on Form 1120-A revised April, 1926, [75] furnished by the Treasury Department of the United States, and headed "Corporation In-

come Tax Return for Fiscal Year 1925." The word "amended" which appears on the face of said document was stamped there by a representative of the Commissioner of Internal Revenue. This document sets forth additional taxes due to the United States of America in the sum of $2,111.65, for the period May 1, 1924 to April 30, 1925, and was filed with the Collector of Internal Revenue, First District of California, San Francisco, California, May 14, 1926, by Zellerbach Paper Company, on behalf of itself and its subsidiaries, National Paper Products Company and Sanitary Products Corporation. Said document was received in evidence as "Petitioner's Exhibit No. 2."

Counsel for Petitioner thereupon offered in evidence a letter bearing the mimeographed signature of John P. McLaughlin on the stationery of the Treasury Department, Internal Revenue Service, San Francisco. Said document was thereupon received in evidence and designated as "Petitioner's Exhibit No. 3."

Thereupon the following proceedings occurred:—

> "Mr. Neylan: I asked counsel for the Government if he would stipulate that this Exhibit No. 3 was received by the Zellerbach Paper Company in the ordinary course of the mail; otherwise, it will put us to the necessity of producing a witness here to testify that that was received. [76]
>
> "Mr. Shearer: That is stipulated to now, and I think it was also covered in the answer as being true.

"Mr. Neylan: Yes, I think you are correct about that.

"The Member: That applies to Exhibit 3?

"Mr. Shearer: Yes."

Thereupon Counsel for the Petitioner called attention to the fact that there was some question as to the accuracy of the copy of the sixty-day letter attached to the Petition filed in the above-entitled matter, whereupon the original sixty-day letter forwarded by the Commissioner of Internal Revenue to Zellerbach Paper Company, and the original sixty-day letter forwarded by the Commissioner of Internal Revenue to National Paper Products Company were offered and received in evidence and designated as follows: Sixty-day letter addressed to Zellerbach Paper Company designated as "Petitioner's Exhibit No. 4;" sixty-day letter addressed to National Paper Products Company designated as "Petitioner's Exhibit No. 5."

Thereupon the following proceedings took place:

"Mr. Neylan: I will now ask Government counsel if they will stipulate that no other return was ever filed by either of these corporations in respect of the tax for the year under review?

"Mr. Shearer: That is agreed to. Counsel intends to include in that stipulation the fact that no return on Form 1122 was filed by the subsidiaries? [77]

"Mr. Neylan: My understanding is that the only returns ever filed by the parent and subsidiaries from my point of view is the original, and

the other is merely an amended return, and my understanding is those were the only returns ever made by the parent or the subsidiaries.

"Mr. Shearer: The Regulations of the Department, I may state to counsel, for a number of years, have required subsidiary corporations to file a return on form 1122, which is subsidiary to the main return on Form 1120. So far as I know such returns were never filed by the subsidiaries in this case, and I am willing to stipulate with counsel that Exhibit 1 and Exhibit 2 are the only returns ever filed by either the Zellerbach Paper Company or any of its subsidiaries, the National Paper Products Company and the Sanitary Products Corporation, for the fiscal year 1925.

"The Member: Is there anything further?

"Mr. Neylan: That is our case, your Honor.

"The Member: Anything on behalf of the Government?

"Mr. Cox: We have nothing."

The foregoing is the substance of the evidence adduced at the trial of this proceeding pertaining to the issues involved in this appeal.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner
1 Montgomery Street,
San Francisco, California. [78]

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of

Tax Appeals, and the same is approved by the undersigned, C. M. Charest, General Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

C. M. CHAREST
General Counsel.
Bureau of Internal Revenue

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this ..... day of ....., 1933.

.....
Member, United States Board
of Tax Appeals

[Endorsed]: Approved and Ordered Filed this 15 day of Feb., 1933.

(Sgd.) J. E. MURDOCK
Member (S)

[Endorsed]: United States Board of Tax Appeals. Filed Feb. 15, 1933. [79]

[Title of Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days from the date of the filing of the Petition for Review in the above entitled case, transmit to the Clerk

of the United States Circuit Court of Appeals for the Ninth Circuit certified copies of the following documents:

1. The docket entries of all proceedings before the Board of Tax Appeals in the above entitled cause;

2. The Petition of the taxpayer, together with deficiency letter dated October 10, 1928, attached to which is "Statement of Returns Examined and Resulting Tax Liability;"

3. Answer of Commissioner of Internal Revenue;

4. Notice to produce from Petitioner's attorney to attorney for Respondent, dated May 29, 1931; (not of record).

5. Amended Petition; [80]

6. Commissioner's Answer to Amended Petition;

7. Findings of Fact and Opinion of Board, including Dissenting Opinion;

8. Decision of the Board entered May 19, 1932;

9. Order of the Board correcting decision entered under date of May 19, 1932, said Order having been entered May 25, 1932;

10. Petition for Review to the Circuit Court of Appeals for the Ninth Circuit;

11. Notice of Filing Petition for Review;

12. Petitioner's Exhibit number one, being Income Tax Return filed by Petitioner on behalf of itself, National Paper Products Company and Sanitary Products Corporation for the fiscal year ending April 30, 1925;

13. Petitioner's Exhibit number two, being doc-

ument designated as Amended Return filed by Zellerbach Paper Company, on behalf of itself, National Paper Products Company and Sanitary Products Corporation on May 14, 1926;

14. Petitioner's Exhibit number three, same being a circular letter bearing the mimeographed signature of J. P. McLaughlin, Collector of Internal Revenue, San Francisco, California;

15. Petitioner's Exhibit number four, and Petitioner's Exhibit number five, being original sixty day letters issued [81] by Commissioner of Internal Revenue to Zellerbach Paper Company and to National Paper Products Company respectively, these Exhibits having been offered in lieu of sixty day letters attached to Petitions filed by said companies on account of typographical errors therein;

16. Statement of Evidence;

17. This Praecipe;

the foregoing to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner
1 Montgomery Street,
San Francisco, California.

[Endorsed]: United States Board of Tax Appeals. Filed November 23, 1932. [82]

[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 82, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 31st day of March, 1933.

[Seal] B. D. GAMBLE
Clerk,
United States Board of Tax Appeals.

[Endorsed]: No. 7141. United States Circuit Court of Appeals for the Ninth Circuit. Zellerbach Paper Company, a corporation, Petitioner, vs. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed April 26, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

P83

No. 7141

United States

Circuit Court of Appeals

For the Ninth Circuit.

ZELLERBACH PAPER COMPANY, a Corporation,
Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.

No. 7141

Upon Petition to Review an Order of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals for the Ninth Circuit

ZELLERBACH PAPER COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 41759
NATIONAL PAPER PRODUCTS COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 41758

STIPULATION AND ORDER FOR CONSOLIDATION ON APPEAL.

Whereas, the two above-named cases, upon motion of John Francis Neylan, Counsel for Petitioners, and consented to by Counsel for Respondent, were consolidated by order of the United States Board of Tax Appeals for trial; and

Whereas, after said trial by the United States Board of Tax Appeals of said consolidated cases, a joint opinion applying to said two cases was rendered by said Board; and

Whereas, petitions for the review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit have been filed by the Petitioners with the Clerk of the United States Board of Tax Appeals, and the appeals perfected; and

Whereas, the same point of law is involved in each of said cases, to-wit: is the collection from the Petitioners of the additional tax claimed by the Respondent for the fiscal year ending April 30th, 1925, barred by the Statute of Limitations; and

Whereas, it is the opinion of the respective Counsel for the parties to the said cases that it would most suit their convenience in the handling of the said cases on appeal, and would also be of great assistance to the said United States Circuit Court of Appeals in its determination of said cases, if said cases should be consolidated for purposes of appeal;

It is hereby stipulated by and between John Francis Neylan and J. Paul Miller, Counsel for each of the Petitioners in the above-entitled cases, and C. M. Charest, General Counsel, Bureau of Internal Revenue, Counsel for the Respondents in each of said cases,

1. That said cases may be consolidated for the purpose of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of oral argument before said Court;

2. That but a single printed transcript of record on appeal be prepared by and printed under the direction of the Clerk of said Court, said Clerk to avoid including in said printed transcript more than one copy of such matters and documents as are

duplicated in the certified transcripts of record sent up to him by the Clerk of the United States Board of Tax Appeals;

3. That on all occasions, when pursuant to law or rule of court, the parties to said cases are privileged to file briefs, a single brief, rather than two, may be filed, wherein all matters involved in all of said cases may be discussed and argued;

4. That the said two cases may be heard by the United States Circuit Court of Appeals for the Ninth Circuit upon one oral argument before said Court.

Dated: San Francisco, California, February 1st, 1933.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner.
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondents.

It is hereby ordered, that pursuant to the above stipulation, the two above-named cases be and they are hereby consolidated in accordance with the terms of said stipulation.

Dated: San Francisco, California, March 10, 1933.

CURTIS D. WILBUR,
United States Circuit Judge.

[Endorsed]: United States Board of Tax Appeals. Filed Mar. 14, 1933.

[Endorsed]: Filed Apr. 26, 1933. Paul P. O'Brien, Clerk.

[CLERK'S NOTE.]

Pursuant to stipulation of counsel for respective parties, and order of the court thereon, this case was consolidated with its companion case, No. 7140 entitled National Paper Products Company, a corporation, petitioner, vs. Guy T. Helvering, as Comm'r of Int. Revenue, respondent, for briefing, argument and decision. Accordingly, all proceedings in the Circuit Court of Appeals for the Ninth Circuit in this case will be found at pages 91 to 114, inclusive, of the record in that companion case, and such proceedings, being similar, are not reprinted here in the interest of economy.

United States Circuit Court of Appeals
for the Ninth Circuit.

No. 7141

ZELLERBACH PAPER COMPANY,
a Corporation,

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

JUDGMENT.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

This Cause came on to be heard on the Transcript of the Record from the United States Board of Tax Appeals and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Order of the said Board of Tax Appeals in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Feb. 28, 1934. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause and Number.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing eighty-nine pages, numbered from and including 1 to and including 89 to be a full, true and correct copy of the record as filed in this cause in the said Circuit Court of Appeals, together with stipulation and order consolidating this cause with its companion cause for briefing, argument and decision, and judgment filed and entered herein; and that all proceedings in this cause in this court were had jointly with its companion case, and that the proceedings as set forth as part of the record in that case cover both these companion cases, and that this record together with those proceedings is a full, true and correct copy of the entire record of the above entitled cause in said Circuit Court of Appeals, excluding original exhibits transmitted herewith, made pursuant to request of counsel for petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, this 28th day of March, 1934.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 4, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court

OF THE

United States

Supreme Court, U. S.
FILED
MAY 10 1934
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1933

Nos.

NATIONAL PAPER PRODUCTS COMPANY (a Corporation),

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

35

No. 1035

ZELLERBACH PAPER COMPANY (a Corporation),

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

36

No. 1036

PETITION FOR WRITS OF CERTIORARI,
to the United States Circuit Court of Appeals
for the Ninth Circuit,
and
BRIEF IN SUPPORT THEREOF.

JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
No. 1 Montgomery Street, San Francisco, California,
Attorneys for Petitioners.